

**RULES  
OF  
THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF UNDERGROUND STORAGE TANKS**

**CHAPTER 1200-1-15  
UNDERGROUND STORAGE TANK PROGRAM**

**TABLE OF CONTENTS**

1200-1-15-.01	Program Scope and Minimum Requirements for Tanks	1200-1-15-.08	Financial Responsibility
1200-1-15-.02	UST Systems: Design, Construction, Installation and Notification	1200-1-15-.09	Administrative Guidelines and Procedure for the Tennessee Petroleum Underground Storage Tank Fund
1200-1-15-.03	General Operating Requirements		
1200-1-15-.04	Release Detection	1200-1-15-.10	Fee Collection and Certificate Issuance Regulations
1200-1-15-.05	Release Reporting, Investigation, and Confirmation	1200-1-15-.11	Appeals
1200-1-15-.06	Release Response and Corrective Action for UST Systems Containing Petroleum	1200-1-15-.12	Indicia of Ownership
1200-1-15-.07	Out-of-Service UST Systems and Closure		

**1200-1-15-.01 PROGRAM SCOPE AND MINIMUM REQUIREMENTS FOR TANKS.**

(1) Applicability.

- (a) The requirements of this chapter apply to all owners and operators of an UST system as defined in rule 1200-1-15-.01(3) except as otherwise provided in subparagraph (b) and (c) of rule 1200-1-15-.01(1).

Any new UST systems listed in subparagraph (b) of rule 1200-1-15-.01(1) must meet the requirements of rule 1200-1-15-.01(2).

- (b) Deferrals. Rules 1200-1-15-.02 through 1200-1-15-.05 and 1200-1-15-.07 through 1200-1-15-.11 do not apply to any of the following types of UST systems:

1. Wastewater treatment tank systems;
2. Any UST systems containing radioactive material that are regulated under the Atomic Energy Act of 1954 (42 USC 2011 and following);
3. Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;
4. Airport hydrant fuel distribution systems; and
5. UST systems with field-constructed tanks.
6. Equipment or machinery that contains petroleum for operational purposes such as hydraulic lift tanks and electrical equipment tanks.
7. Any UST system whose capacity is 110 gallons or less.
8. Any UST system that contains a de minimis concentration of petroleum.
9. Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

(Rule 1200-1-15-.01, continued)

- (c) Deferrals. Rule 1200-1-15-.04 does not apply to any UST system that stores fuel solely for use by emergency power generators.
- (2) Minimum Requirements for Tanks.
  - (a) No person may install an UST system for the purpose of storing petroleum unless the UST system (whether of single or double-wall construction):
    - 1. Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
    - 2. Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any petroleum; and
    - 3. Is constructed or lined with material that is compatible with the petroleum.
  - (b) Notwithstanding subparagraph (a) of this paragraph, an UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this subparagraph for the remaining life of the tank.

[Note: The National Association of Corrosion Engineers Standard RP-02-85 (March 1985) Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems, may be referred to for additional information.]

- (3) Definitions.
  - (a) "Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the above-ground portion of an UST system and aboveground releases associated with overfills and transfer operations as the petroleum moves to or from an UST system.
  - (b) "Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of petroleum to and from an UST.
  - (c) "Asymptotic level" means a graphical representation of the level of contaminant remaining in soil and/or ground water, where the y-axis of the graph indicates contaminant level and the x-axis represents length of treatment. Samples of the soil and/or ground water shall be taken quarterly. After the slope of the graph approximates the slope of the x-axis, using the data from four consecutive quarters, an asymptotic level of treatment would have been reached; provided that the contaminant treatment system has been properly designed and operated.
  - (d) "Bedrock" means any rock, solid and continuous, which is exposed at the surface of the earth or overlain by unconsolidated material.
  - (e) "Belowground release" means any release to the subsurface of the land or to ground water. This includes, but is not limited to, releases from the belowground portions of an underground storage tank system and belowground releases associated with overfills and transfer operations as the petroleum moves to or from an underground storage tank.

(Rule 1200-1-15-.01, continued)

- (f) “Beneath the surface of the ground” means beneath the ground surface or otherwise covered with earthen materials.
- (g) “Cathodic protection” is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.
- (h) “Cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.
- (i) “CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.
- (j) “Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.
- (k) “Connected piping” means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which petroleum flows. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.
- (l) “Consumption” with respect to heating oil means consumed on the premises where stored.
- (m) “Corrosion expert” means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must submit documentation for review by the Division that they have accreditation or certification as a corrosion specialist or senior corrosion technologist by the National Association of Corrosion Engineers or have education and a minimum of 4 years responsible charge work experience in the corrosion field. If it is determined by the Division that a person has sufficient experience and education to be qualified to take responsible charge in corrosion control of buried or submerged metal piping systems and metal tanks, then that person shall be classified by the Division as a Corrosion Expert for the purposes of this rule.
- (n) “Dielectric material” means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system (e.g., tank from piping).
- (o) “Division” means the Division designated by the Commissioner of the Department of Environment and Conservation as the agency to implement the Underground Storage Tank Program in Tennessee.
- (p) “Drinking water supply” means any aquifer or water source whose chemical characteristics meet the primary and secondary drinking water standards as defined under rule 1200-5-1 and provides a yield of at least one-half gallon per minute. This shall also include any water supply used for drinking by the citizens of the state.
- (q) “Electrical equipment” means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

(Rule 1200-1-15-.01, continued)

- (r) "Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.
- (s) "Existing tank system" means a tank system used to contain an accumulation of petroleum or for which installation had commenced on or before December 22, 1988. Installation is considered to have commenced if:
  - 1. the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,
    - (i) either a continuous on-site physical construction or installation program has begun; or,
    - (ii) the owner or operator has entered into contractual obligations (which cannot be cancelled or modified without substantial loss) for physical construction at the site or installation of the tank system to be completed within a reasonable time.
- (t) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.
- (u) "Flow-through process tank" means a tank whose principle use is not for storage but is primarily used in the manufacture of a product or in a treatment process. Flow-through process tanks form an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.
- (v) "Free product" refers to petroleum that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water.)
- (w) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.
- (x) "Ground water" means water below the land surface in a zone of saturation.
- (y) "Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.
- (z) "Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.
- (aa) "Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

(Rule 1200-1-15-.01, continued)

- (bb) "Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing petroleum.
- (cc) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.
- (dd) "New tank system" means a tank system that will be used to contain an accumulation of petroleum and for which installation has commenced after December 22, 1988. (See also "Existing Tank System").
- (ee) "Noncommercial purposes" with respect to motor fuel means not for resale.
- (ff) "On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.
- (gg) "Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under rule 1200-1-15-.07.
- (hh) "Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.
- (ii) "Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the petroleum to the environment.
- (jj) "Owner" means: (a) in the case of an UST system in use on November 8, 1984, or brought into use after that date, any person who owns an UST system used for storage, use, or dispensing of petroleum; and (b) in the case of any UST system in use before November 8, 1984, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.
- (kk) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this state or any other state or country.
- (ll) "Petroleum" means crude oil or any fraction thereof that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).
- (mm) "Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimis quantities of other hazardous substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (nn) "Pipe" or "Piping" means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.
- (oo) "Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.
- (pp) "Release" means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a petroleum substance from an UST including its associated piping, into ground water, surface water, or subsurface soils.

(Rule 1200-1-15-.01, continued)

- (qq) "Release detection" means determining whether a release of petroleum has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.
- (rr) "Repair" means to restore a tank or UST system component that has caused a release of petroleum from the UST system.
- (ss) "Residential tank" is a tank located on property used primarily for dwelling purposes.
- (tt) "Routinely contains petroleum" means those parts of the UST system designed to store, transport or dispense petroleum.
- (uu) "SARA" means the Superfund Amendments and Reauthorization Act of 1986.
- (vv) "Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.
- (ww) "Storm-water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.
- (xx) "Surface impoundment" is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.
- (yy) "Tank" is a stationary device designed to contain an accumulation of petroleum and constructed of non-earthen materials (e.g., wood, concrete, steel, fiberglass) that provide structural support.
- (zz) "Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.
- (aaa) "Underground release" means any below ground release.
- (bbb) "Underground storage tank" or "UST" means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum, and the volume of which (including the volume of underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. This term does not include any:
  - 1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for non-commercial purposes;
  - 2. Tank used for storing heating oil for consumption on the premises where stored;
  - 3. Septic tank;
  - 4. Pipeline facility (including gathering lines) regulated under:
    - (i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or

(Rule 1200-1-15-.01, continued)

- (ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
  - (iii) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d) 1. or (d) 2. of this definition;
5. Surface impoundment, pit, pond, or lagoon;
  6. Storm-water or wastewater collection system;
  7. Flow-through process tank;
  8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
  9. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” or “UST” does not include any pipes connected to any tank which is described in parts 1 through 9 of this subparagraph.

- (ccc) “Upgrade” means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of petroleum.
- (ddd) “UST system” or “Tank system” means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
- (eee) “Wastewater treatment tank” means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

**Authority:** T.C.A. §§4-5-201 et. seq., 68-53-107, 68-53-113, 68-215-101 et. seq., and 68-215-201 et seq.  
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#### **1200-1-15-.02 UST SYSTEMS: DESIGN, CONSTRUCTION, INSTALLATION AND NOTIFICATION.**

- (1) Performance standards for new UST systems.

In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store petroleum, all owners and/or operators of new UST systems shall meet the following requirements.

- (a) Tanks. Each tank shall be properly designed and constructed, and any portion underground that routinely contains petroleum shall be protected from corrosion as specified below:
  1. The tank is constructed of fiberglass-reinforced plastic;
  2. The tank is constructed of steel and cathodically protected in the following manner:
    - (i) The tank is coated with a suitable dielectric material;
    - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;

(Rule 1200-1-15-.02, continued)

- (iii) Impressed current systems are designed to allow determination of current operating status as required in rule 1200-1-15-.03(2)(c); and
    - (iv) Cathodic protection systems are operated and maintained in accordance with rule 1200-1-15-.03(2) or a method determined by the Division to provide equivalent protection against corrosion;
  - 3. The tank is constructed of a steel-fiberglass-reinforced-plastic composite;
  - 4. The tank is constructed of metal without additional corrosion protection measures provided that:
    - (i) The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operational life; and
    - (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (a)4.(i) of this paragraph for the remaining life of the tank; or
  - 5. The tank construction and corrosion protection are determined by the Division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than parts (a)1. through 4. of this paragraph.
- (b) Piping. The piping that routinely contains petroleum and is in contact with the ground shall be properly designed, constructed, and protected from corrosion as specified below:
  - 1. The piping is constructed of fiberglass-reinforced plastic; or
  - 2. The piping is constructed of steel and cathodically protected in the following manner:
    - (i) The piping is coated with a suitable dielectric material;
    - (ii) Field-installed cathodic protection systems are designed by a corrosion expert;
    - (iii) Impressed current systems are designed to allow determination of current operating status as required in rule 1200-1-15-.03(2)(c); and
    - (iv) Cathodic protection systems are operated and maintained in accordance with rule 1200-1-15-.03(2) or in a manner determined by the Division to provide equivalent protection against corrosion.
  - 3. The piping is constructed of metal without additional corrosion protection measures provided that:
    - (i) The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operational life; and
    - (ii) Owners and/or operators maintain records that demonstrate compliance with the requirements of subpart (b)3.(i) of rule 1200-1-15-.02(1) for the remaining life of the piping; or



(Rule 1200-1-15-.02, continued)

4. The piping construction and corrosion protection are determined by the Division to be designed to prevent the release or threatened release of any stored petroleum in a manner that is no less protective of human health and the environment than the requirements in parts (b)1. through 3. of rule 1200-1-15-.02(1).
- (c) Spill and overfill prevention equipment.
1. Except as provided in part (c)2. of rule 1200-1-15-.02(1), to prevent spilling and overfilling associated with petroleum transfer to the UST system, owners and/or operators shall use the following spill and overfill prevention equipment:
    - (i) Spill prevention equipment that will prevent release of petroleum to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
    - (ii) Overfill prevention equipment that will:
      - (I) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or
      - (II) Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or
      - (III) Restrict flow 30 minutes prior to overfilling, alert the operator with a high level alarm one minute before overfilling, or automatically shut off flow into the tanks so that none of the fittings located on top of the tank are exposed to product due to overfilling.
  2. Owners and/or operators are not required to use the spill and overfill prevention equipment specified in part (c)1. of rule 1200-1-15-.02(1) if:
    - (i) Alternative equipment is used that is determined by the Division to be no less protective of human health and the environment than the equipment specified in subpart (c)1.(i) or (ii) of rule 1200-1-15-.02(1); or
    - (ii) The UST system is filled by transfers of no more than 25 gallons at one time.
- (d) Installation.
1. All tanks and piping shall be installed in accordance with the manufacturer's installation instructions; and
  2. After installation has been completed and before the system is placed into operation, a tank tightness test as specified by rule 1200-1-15-.04(3)(c) and a line tightness test as specified in rule 1200-1-15-.04(4)(b) shall be conducted, except that a line tightness test is not required for suction systems meeting the standards set forth in rule 1200-1-15-.04(2)(b)2(i) through (v). The tank tightness test and line tightness test, if required, shall indicate the tank system will not leak prior placing the tank system into operation
- (e) Certification of installation. All owners and/or operators shall ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with subparagraph (d) of rule 1200-1-15-.02(1) by providing a certification of compliance on the UST notification form in accordance with rule 1200-1-15-.02(3).

(Rule 1200-1-15-.02, continued)

1. The installer has been certified by the tank and piping manufacturers; or
  2. The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or
  3. The installation has been inspected and approved by the Division; or
  4. All work listed in the manufacturer's installation checklists has been completed; or
  5. The owner and operator have complied with another method for ensuring compliance with paragraph (d) of rule 1200-1-15-.02(1) that is determined by the Division to be no less protective of human health and the environment.
- (2) Upgrading of existing UST systems.
- (a) Alternatives allowed. Not later than December 22, 1998, all existing UST systems shall comply with one of the following requirements:
    1. New UST system performance standards under rule 1200-1-15-.02(1);
    2. The upgrading requirements in subparagraphs (b) through (d) of this paragraph; or
    3. Closure requirements under rule 1200-1-15-.07, including applicable requirements for corrective action under rule 1200-1-15-.06.
  - (b) Tank upgrading requirements. Steel tanks shall be upgraded to meet one of the following requirements:
    1. Interior lining. A tank may be upgraded by internal lining if:
      - (i) The lining is installed in accordance with the requirements of rule 1200-1-15-.03(4) and at least the following procedures and practices:
        - (I) The storage tank lining material must be compatible with the product to be stored;
        - (II) The tank shell shall be structurally sound prior to lining;
        - (III) Lining manufacturers directions are followed during installation of lining; and
        - (IV) After the tank is lined and before the tank is returned to service, the tank shall be tank tightness tested according to rule 1200-1-15-.04(3)(c); and
      - (ii) Within 10 years after lining, and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.
    2. Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of rule 1200-1-15-.02(1)(a)2.(ii), (iii), and (iv) and the integrity of the tank is ensured using one of the following methods:

(Rule 1200-1-15-.02, continued)

- (i) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
    - (ii) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with rule 1200-1-15-.04(3)(d) through (h); or
    - (iii) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting two (2) tightness tests that meet the requirements of rule 1200-1-15-.04(3)(c). The first tightness test shall be conducted prior to installing the cathodic protection system. The second tightness test shall be conducted between three (3) and six (6) months following the first operation of the cathodic protection system; or
    - (iv) The tank is assessed for corrosion holes by a method that is determined by the Division to prevent releases in a manner that is no less protective of human health and the environment than subparts (b)2.(i) through (iii) of this paragraph.
  - 3. Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:
    - (i) The lining is installed in accordance with the requirements of rule 1200-1-15-.03(4) and rule 1200-1-15-.02(2)(b)1.(i), and
    - (ii) The cathodic protection system meets the requirements of rule 1200-1-15-.02(1)(a)2.(ii), (iii), and (iv).
  - (c) Piping upgrading requirements. Metal piping that routinely contains petroleum and is in contact with the ground shall be cathodically protected and meet the requirements of rule 1200-1-15-.02(1)(b)2.(ii), (iii), and (iv).
  - (d) Spill and overfill prevention equipment. To prevent spilling and overfilling associated with petroleum transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in rule 1200-1-15-.02(1)(c).
- (3) Notification requirements.
- (a) Any owner who brings an underground storage tank system into use after July 1, 1989, shall notify the Department by phone or any other method 15 days in advance of bringing such underground storage tanks system into use. The owner shall submit notification of the underground storage tank system to the Department within 15 days of placing product into the underground storage tank system. The owner shall use the notification form prescribed in Appendix 1 of this rule. Any owner or operator wishing to replace or upgrade an existing and properly registered UST system may do so as needed, provided that within 30 days after completion of said replacement or upgrading, he shall notify the Division of the changes made on the form prescribed in Appendix 1, indicating that it is an amendment to the existing system.

[Note: Owners and/or operators of UST systems that were in the ground on or after May 8, 1986, unless taken out of operation on or before January 1, 1974, were required to notify the designated state or local agency in accordance with the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, on a form published by EPA on November 8, 1985, (50 CFR 46602) unless notice was given pursuant to section 103(c) of CERCLA. Owners and/or

(Rule 1200-1-15-.02, continued)

operators who have not complied with the notification requirements may use portions I through XI of the notification form contained in Appendix 1 of this rule.]

- (b) Owners and/or operators shall use the form in Appendix 1 of this rule to report petroleum underground storage tanks. Owners and/or operators shall complete the notification form accurately and in its entirety.
- (c) Owners required to submit notices under subparagraph (a) of this paragraph shall provide notices to the Division for each tank they own. Owners may provide notice for several tanks using one notification form, but owners who own tanks located at more than one place of operation shall file a separate notification form for each separate place of operation.
- (d) Notices required to be submitted under subparagraph (a) of rule 1200-1-15-.02(3) shall provide all of the information in Sections I through XI of the prescribed form for each tank for which notice shall be given. Notices for tanks installed after December 22, 1988, shall also provide all of the information in Section XI of the prescribed form for each tank for which notice shall be given.
- (e) All owners and operators of new UST systems shall certify in the notification form compliance with the following requirements:
  - 1. Installation of tanks and piping under rule 1200-1-15-.02(1)(e);
  - 2. Cathodic protection of steel tanks and piping under rule 1200-1-15-.02(1)(a) and (b);
  - 3. Financial responsibility under rule 1200-1-15-.08: and
  - 4. Release detection under rule 1200-1-15-.04(2).
- (f) All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in rule 1200-1-15-.02(1)(d).
- (g) Beginning October 26, 1988, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification obligations under subparagraph (a) of rule 1200-1-15-.02(3). The form provided in Appendix 2 may be used to comply with this requirement.
- (h) Any change in the status of the tanks at a petroleum UST facility shall be reported within thirty (30) days of said change. This includes but is not limited to changes of ownership, upgrading or replacement of tanks, changes in mailing address, and changes in service. Such reports shall be made using an amended notification form. In the case of a sale of tanks which have been installed at a location and reported to the Division as required by Rule. The seller shall submit the notification form provided in Appendix 3 and shall also inform the buyer of the notification requirement.

**Authority:** T.C.A. §§4-5-201 et seq., 68-215-107 et seq., and 68-215-201 et seq. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed July 3, 1991; effective August 17, 1991. Amendment filed July 28, 1995; effective October 10, 1995. Amendment filed February 4, 1998; effective April 20, 1998. Amendment filed March 6, 2000; effective May 20, 2000.

### **1200-1-15-.03 GENERAL OPERATING REQUIREMENTS.**

- (1) Spill and overfill control.

(Rule 1200-1-15-.03, continued)

- (a) Owners and/or operators shall ensure that releases due to spilling or overfilling do not occur. The owner and/or operator shall ensure that the volume available in the tank is greater than the volume of petroleum to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.
- (b) The owner and/or operator must report, investigate, and clean up any spills and overfills in accordance with rule 1200-1-15-.05(4).

(2) Operation and maintenance of corrosion protection.

All owners and/or operators of steel UST systems with corrosion protection shall comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store petroleum:

- (a) All corrosion protection systems shall be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contains petroleum and is in contact with the ground.
- (b) All UST systems equipped with cathodic protection systems shall be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:
  - 1. Frequency. All cathodic protection systems shall be tested within 6 months of installation and at least every 3 years thereafter;
  - 2. The cathodic protection system shall be functioning as designed and is effectively preventing corrosion; and
  - 3. The owner and/or operator shall maintain records that demonstrate compliance with this paragraph in a format established by the Division.
- (c) UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.
- (d) For UST systems using cathodic protection, records of the operation of the cathodic protection shall be maintained (in accordance with rule 1200-1-15-.03(5)) to demonstrate compliance with the performance standards in rule 1200-1-15-.03(2). These records shall provide the following:
  - 1. The results of the last three inspections required in subparagraph (c) of rule 1200-1-15-.03(2); and
  - 2. The results of testing from the last two inspections required in subparagraph (b) of rule 1200-1-15-.03(2).

(3) Compatibility.

Owners and/or operators shall use an UST system made of or lined with materials that are compatible with the petroleum stored in the UST system.

(4) Repairs allowed.

(Rule 1200-1-15-.03, continued)

Owners and/or operators of UST systems shall ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store petroleum. The repairs shall meet the following requirements:

- (a) Repairs to UST systems shall be conducted so as to effectively prevent releases for the operational life of the tank system.
  - (b) Repairs to fiberglass-reinforced plastic tanks shall be made by the manufacturer's authorized representatives or in accordance with the manufacturer's specifications.
  - (c) Metal pipe sections and fittings that have released product as a result of corrosion or other damage shall be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.
  - (d) Repaired tanks and piping shall be tightness tested in accordance with rule 1200-1-15-.04(3)(c) and rule 1200-1-15-.04(4)(b) within 30 days following the date of the completion of the repair except as provided in parts (d)1. through 3. of rule 1200-1-15-.03(4):
    - 1. The repaired tank is internally inspected; or
    - 2. The repaired portion of the UST system is monitored for releases in accordance with a method specified in rule 1200-1-15-.04(3)(d) through (i); or
    - 3. Another test method is used that is determined by the Division to be no less protective of human health and the environment than those listed above.
  - (e) Within 6 months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with rule 1200-1-15-.03(2)(b) and (c) to ensure that it is operating properly.
  - (f) UST system owners and/or operators shall maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of rule 1200-1-15-.03(4).
- (5) Reporting and record keeping.

Owners and/or operators of UST systems shall cooperate fully with inspections, monitoring and testing conducted by the Division, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to the Tennessee Petroleum Underground Storage Tank Act T.C.A. §68-215-107.

- (a) Reporting. Owners and/or operators shall submit the following information to the Division:
  - 1. Notification for all UST systems (rule 1200-1-15-.02(3)), which includes certification of installation for new UST systems (rules 1200-1-15-.02(1)(e));
  - 2. Reports of all releases including suspected releases (rule 1200-1-15-.05(1)), spills and overfills (rule 1200-1-15-.05(4)), and confirmed releases (rule 1200-1-15-.06(2));
  - 3. Corrective actions planned or taken including initial abatement measures (rule 1200-1-15-.06(3)) initial site characterization (rule 1200-1-15-.06(4)), free product removal (rule 1200-1-15-.06(5)) investigation of soil and ground-water cleanup (rule 1200-1-15-.06(6)), and corrective action plan (rule 1200-1-15-.06(7)); and

(Rule 1200-1-15-.03, continued)

4. A notification before permanent closure or change-in-service (rule 1200-1-15-.07(2)).
- (b) Record keeping. Owners and/or operators shall maintain the following information:
  1. A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (rule 1200-1-15-.02(1)(a)4; rule 1200-1-15-.02(1)(b)3);
  2. Documentation of operation of corrosion protection equipment (rule 1200-1-15-.03(2));
  3. Documentation of UST system repairs (rule 1200-1-15-.03(4)(f));
  4. Recent compliance with release detection requirements (rule 1200-1-15-.04(5)); and
  5. Results of the site investigation conducted at permanent closure (rule 1200-1-15-.07(5)).
- (c) Availability and Maintenance of Records. Owners and/or operators shall keep the records required either:
  1. At the UST site and immediately available for inspection by the Division; or
  2. At a readily available alternative site and be provided for inspection to the Division upon request.
  3. In the case of permanent closure records required under rule 1200-1-15-.07(5), owners and/or operators are also provided with the additional alternative of mailing closure records to the Division if they cannot be kept at the site or an alternative site as indicated above.

**Authority:** T.C.A. §§4-5-201 et seq., 68-215-107, and 68-215-201 et seq. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed February 4, 1998; effective April 20, 1998. Amendment filed March 6, 2000; effective May 20, 2000.

#### **1200-1-15-.04 RELEASE DETECTION.**

- (1) General requirements for release detection.
  - (a) Owners and/or operators of new and existing UST systems shall provide a method, or combination of methods, of release detection that:
    1. Can detect a release from any portion of the tank and the connected underground piping that routinely contains petroleum;
    2. Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and
    3. Meets the performance requirements in rule 1200-1-15-.04(3) or rule 1200-1-15-.04(4), with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods used after December 22, 1990 except for methods permanently installed prior to that date, shall be capable of detecting the leak rate or quantity specified for that method in rule 1200-1-15-.04(3)(b), (c), and (d) or rule 1200-1-15-.04(4)(a) and (b) with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(Rule 1200-1-15-.04, continued)

- (b) When a release detection method operated in accordance with the performance standards in rule 1200-1-15-.04(3) and rule 1200-1-15-.04(4) indicates a release may have occurred, owners and operators shall notify the Division in accordance with rule 1200-1-15-.05.
- (c) Owners and/or operators of all UST systems shall comply with the release detection requirements of rule 1200-1-15-.04 by December 22 of the year listed in the following table:

Year System was installed	Year when release detection is required (by December 22 of the year indicated)				
	1989	1990	1991	1992	1993
Before 1965 or Date Unknown	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988					RD

New tanks (after December 22, 1988) immediately upon installation

P - Shall begin release detection for all pressurized piping in accordance with rule 1200-1-15-.04(2)(b)1.

RD - Shall begin release detection for tanks and suction piping in accordance with rule 1200-1-15-.04(2)(a) and rule 1200-1-15-.04(2)(b)2.

- (d) Any existing UST system that cannot apply a method of release detection that complies with the requirements of rule 1200-1-15-.04 shall complete the closure procedures in rule 1200-1-15-.07 by the date on which release detection is required for that UST system under subparagraph (c) of rule 1200-1-15-.04(1).

(2) Requirements for petroleum UST systems.

Owners and operators of petroleum UST systems shall provide release detection for tanks and piping as follows:

- (a) Tanks. Tanks shall be monitored at least every 30 days for releases using one of the methods listed in rule 1200-1-15-.04(3)(d)-(h) except that:
  1. UST systems that meet the performance standards in rule 1200-1-15-.02(1) or rule 1200-1-15-.02(2), and the monthly inventory control requirements in rule 1200-1-15-.04(3)(a) or (b), may use tank tightness testing (conducted in accordance with rule 1200-1-15-.04(3)(c)) at least every 5 years until December 22, 1998 or until 10 years after the tank is installed or upgraded under rule 1200-1-15-.02(2)(b), whichever is later;
  2. UST systems that do not meet the performance standards in rule 1200-1-15-.02(1) or rule 1200-1-15-.02(2) may use monthly inventory controls (conducted in accordance with rule 1200-1-15-.04(3)(a) or (b)) and annual tank tightness testing (conducted in accordance with rule 1200-1-15-.04(3)(c)) until December 22, 1998 when the tank shall be upgraded under rule 1200-1-15-.02(2) or permanently closed under rule 1200-1-15-.07(2); and
  3. Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with rule 1200-1-15-.04(3)(b)).



(Rule 1200-1-15-.04, continued)

- (b) Piping. Underground piping that routinely contains petroleum shall be monitored for releases in a manner that meets one of the following requirements:
  - 1. Pressurized piping. Underground piping that conveys petroleum under pressure shall:
    - (i) Be equipped with an automatic line leak detector conducted in accordance with rule 1200-1-15-.04(4)(a); and
    - (ii) Have an annual line tightness test conducted in accordance with rule 1200-1-15-.04(4)(b) or have monthly monitoring conducted in accordance with rule 1200-1-15-.04(4)(c).
  - 2. Suction piping. Underground piping that conveys petroleum under suction shall either have a line tightness test conducted at least every 3 years and in accordance with rule 1200-1-15-.04(4)(b), or use a monthly monitoring method conducted in accordance with rule 1200-1-15-.04(4)(c). No release detection is required for suction piping that is designed and constructed to meet the following standards:
    - (i) The below-grade piping operates at less than atmospheric pressure;
    - (ii) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
    - (iii) Only one check valve is included in each suction line;
    - (iv) The check valve is located directly below and as close as practical to the suction pump; and
    - (v) A method is provided that allows compliance with subparts (b)2(ii)-(iv) of rule 1200-1-15-.04(2) to be readily determined.
- (3) Methods of release detection for tanks.

Each method of release detection for tanks used to meet the requirements of rule 1200-1-15-.04(2) shall be conducted in accordance with the following:

- (a) Inventory control. Inventory control must meet the following requirements
  - 1. Inventory volume measurements for petroleum inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;
  - 2. The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;
  - 3. The petroleum inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;
  - 4. Deliveries are made through a drop tube that extends to within one foot of the tank bottom;
  - 5. Petroleum dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of petroleum withdrawn; and

(Rule 1200-1-15-.04, continued)

6. The measurement of any water level in the bottom of the tank is made to the nearest one-eighth of an inch at least once a month.
  7. A leak is suspected and subject to the requirements of rule 1200-1-15-.05 if either daily overages or shortages are greater than 1.0 percent of the total monthly flow-through plus 130 gallons.
- (b) Manual tank gauging. Manual tank gauging must meet the following requirements:
1. Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;
  2. Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the required period;
  3. The equipment used is capable of measuring the level of petroleum over the full range of the tank's height to the nearest one-eighth of an inch;
  4. Tanks which meet the volume, diameter and test duration requirements as set forth below may use manual tank gauging as the sole method of release detection:

NOMINAL CAPACITY	TANK DIAMETER	MINIMUM DURATION OF TEST
up to 550 gallons	*	36 hours
551 - 1000 gallons	64 inches	44 hours
551 - 1000 gallons	48 inches	58 hours

\*Any diameter tank of up to 550 gallons may use manual tank gauging as the sole method of release detection if the duration of the test is at least 36 hours.

5. A leak is suspected and subject to the requirements of rule 1200-1-15-.05 if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

NOMINAL CAPACITY	TANK DIAMETER	MINIMUM DURATION OF TEST	WEEKLY STANDARD (one test)	MONTHLY STANDARD (Average of 4 Tests)
Up to 550 gallons		36 hours	10 gallons	5 gallons
551-1000 gallons		36 hours	13 gallons	7 gallons
551-1000 gallons	64 inches	44 hours	9 gallons	4 gallons
551-1000 gallons	48 inches	58 hours	12 gallons	6 gallons

(Rule 1200-1-15-.04, continued)

1001-2000 gallons

36 hours

26 gallons

13 gallons

6. Manual tank gauging may not be used as the sole method of release detection for tanks of 551 to 1000 gallons nominal capacity which cannot meet the diameter or test duration requirements as set forth in part 4 of this subparagraph or for tanks of 1001 to 2000 gallons nominal capacity. These tanks must use manual tank gauging in combination with tank tightness testing in accordance with rule 1200-1-15-.04(2)(a).
  7. Tanks of greater than 2000 gallons nominal capacity may not use this method to meet the requirements of this rule.
- (c) Tank tightness testing. Tank tightness testing devices, automatic tank gauging devices or other equipment may be used to satisfy the requirements of this subparagraph, provided that the testing performed by such a device meet the following requirements:
1. The method shall be capable of detecting a 0.1 gallon per hour leak rate from any portion of the tank that routinely contains petroleum while accounting for the effects of thermal expansion or contraction of the petroleum, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.
  2. The information relating to the tank tightness test must be reported in a format established by the Division. The tank tightness test report must include, but is not necessarily limited to the following information:
    - (i) Information which identifies the tank and the facility;
    - (ii) Information which identifies the test method and test conditions established by the manufacturer's specifications and/or required by the third party certification of the method;
    - (iii) Information which identifies the person and/or company performing the test;
    - (iv) Data gathered during the performance of the test; and
    - (v) Results expressed as follows:
      - (I) Leak rate in gallons per hour and as "Pass" or "Fail" for volumetric test methods; or
      - (II) "Pass" or "Fail" for non-volumetric test methods.
- (d) Automatic tank gauging. Equipment for automatic tank gauging must be permanently installed in the tank and must meet one of the following requirements:
1. Automatic tank gauging devices which were installed prior to December 22, 1990, and which do not meet the requirements of parts 2 or 3 of this subparagraph:
    - (i) Inventory control (or another test of equivalent performance) must be conducted in accordance with the requirements of rule 1200-1-15-.04(3)(a); and
    - (ii) A release is suspected and subject to the requirements of rule 1200-1-15-.05 if either daily overages or shortages are greater than 1.0 percent of the total monthly flow-through plus 130 gallons.

(Rule 1200-1-15-.04, continued)

2. Automatic tank gauging devices capable of detecting at least a 0.2 gallon per hour leak rate from any portion of the tank that routinely contains petroleum must be placed in leak test mode at least once per month.
  3. Automatic tank gauging systems which are capable of continuous statistical release detection must be placed in the leak test mode at least once per month if a test cannot be obtained during any one month period, except for those systems which also use Statistical Inventory Reconciliation in accordance with rule 1200-1-15-.04(3)(h).
- (e) Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone shall meet the following requirements:
1. The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;
  2. The stored petroleum, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;
  3. The measurement of vapors by the monitoring device is not rendered inoperative by the ground water, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;
  4. The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;
  5. The vapor monitors are designed and operated to detect any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;
  6. In the UST excavation zone, the site is assessed to ensure compliance with the requirements in parts (e)1.-4. of rule 1200-1-15-.04(3) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains petroleum; and
  7. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
  8. A release is suspected and subject to the requirements of rule 1200-1-15-.05 if:
    - (i) An automatic and/or continuous monitoring device signals an alarm;
    - (ii) Any liquid product is observed during manual monitoring; or
    - (iii) Any significant increase in concentration above background of the petroleum stored in the tank system, a component or components of that substance or a tracer compound placed in the tank system is detected by a monitoring device.
- (f) Groundwater monitoring. Testing or monitoring for liquids on the ground water shall meet the following requirements:
1. Ground water monitoring shall not be allowed in areas where the tank excavation zone has encountered bedrock.

(Rule 1200-1-15-.04, continued)

2. The petroleum stored is immiscible in water and has a specific gravity of less than one;
  3. Ground water is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);
  4. The slotted portion of the monitoring well casing shall be designed to prevent migration of natural soils or filter pack into the well and to allow entry of petroleum on the water table into the well under both high and low ground water conditions;
  5. Monitoring wells shall be sealed from the ground surface to the top of the filter pack;
  6. Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;
  7. The continuous monitoring devices or manual methods used can detect the presence of at least one-eighth of an inch of free product on top of the ground water in the monitoring wells;
  8. Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in parts (f)1.-5. of rule 1200-1-15-.04(3) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains petroleum; and
  9. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
  10. A release is suspected and subject to the requirements of rule 1200-1-15-.05 if:
    - (i) An automatic and/or continuous monitoring device signals an alarm; or
    - (ii) Any liquid product is observed on top of the groundwater in the monitoring well during manual monitoring.
- (g) Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains petroleum and also meets one of the following requirements:
1. For double-walled UST systems, the sampling or testing method can detect a release through the inner wall in any portion of the tank that routinely contains petroleum;
  2. For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier;
    - (i) The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10-6 cm/sec for the petroleum stored) to direct a release to the monitoring point and permit its detection;

(Rule 1200-1-15-.04, continued)

- (ii) The barrier is compatible with the petroleum stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;
    - (iii) For cathodically protected tanks, the secondary barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system;
    - (iv) The ground water, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;
    - (v) The site is assessed to ensure that the secondary barrier is always above the ground water and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and,
    - (vi) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.
  - 3. For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.
- (h) Statistical inventory reconciliation. Statistical analysis of inventory, delivery and dispensing data collected over a period of time must meet the following requirements:
- 1. Inventory control shall be conducted in accordance with the requirements of rule 1200-1-15-.04(3)(a);
  - 2. A report shall be generated monthly, within 10 days after the end of the data collection for that time period. The report shall include, but is not limited to the following:
    - (i) The inventory records used, i.e., the raw data; and
    - (ii) The statistical inventory reconciliation determination;
  - 3. For quantitative statistical inventory reconciliation methods, the numerical leak rate shall be reported unless the statistical inventory reconciliation determination results in an "Inconclusive" under the provisions of subpart (h)4(iii) of this paragraph;
  - 4. The statistical inventory reconciliation determination shall be reported using one of the following terms:
    - (i) If the calculated leak rate does not exceed 0.10 gallons per hour, the results shall be reported as a "Pass";
    - (ii) If the calculated leak rate exceeds 0.10 gallons per hour, the results shall be reported as a "Fail";
    - (iii) If the leak rate cannot be calculated using the available data, the results shall be reported as an "Inconclusive";
  - 5. If the statistical inventory reconciliation method used requires more than 30 days of data for initial evaluation, another method of release detection must be conducted during that initial data collection period; and

(Rule 1200-1-15-.04, continued)

6. The owner/operator shall report a suspected release in accordance with Rule 1200-1-15-.05:
  - (i) When the statistical inventory reconciliation determination is reported as a “Fail”; or
  - (ii) When two consecutive “Inconclusive” statistical inventory reconciliation determinations are reported.
- (i) Other methods. Any other type of release detection method, or combination of methods, can be used if:
  1. It can detect a 0.2 gallon per hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or
  2. The Division may approve another method if the owner and operator can demonstrate that the method can detect a release as effective as any of the methods allowed in subparagraphs (c)-(h) of rule 1200-1-15-.04(3). In comparing methods, the Division shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator shall comply with any conditions imposed by the Division on its use to ensure the protection of human health and the environment.
- (4) Methods of release detection for piping.

Each method of release detection for piping used to meet the requirements of rule 1200-1-15-.04(2) shall be conducted in accordance with the following:

- (a) Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of petroleum through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within 1 hour. An annual test of the operation of the leak detector shall be conducted in accordance with the manufacturer’s requirements.
  - (b) Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon per hour leak rate at one and one-half times the operating pressure.
  - (c) Applicable tank methods. Any of the methods in rule 1200-1-15-.04(3)(e) through (i) may be used if they are designed to detect a release from any portion of the underground piping that routinely contains petroleum.
- (5) Release detection record keeping.

All UST system owners and/or operators shall maintain records in accordance with rule 1200-1-15-.03(5) demonstrating compliance with all applicable requirements of rule 1200-1-15-.04. These records shall include the following:

- (a) All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, shall be maintained for 5 years from the date of installation;

(Rule 1200-1-15-.04, continued)

- (b) The results of any sampling, testing, or monitoring shall be maintained for at least 1 year except that the results of tank tightness testing conducted in accordance with rule 1200-1-15-.04(3)(c) shall be retained until the next test is conducted; and
- (c) Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site shall be maintained for at least one year after the servicing work is completed. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for 5 years from the date of installation.

**Authority:** T.C.A. §§4-5-201 et seq., 68-215-107, and 68-215-201 et seq. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed February 4, 1998; effective April 20, 1998. Amendment filed March 6, 2000; effective May 20, 2000.

#### **1200-1-15-.05 RELEASE REPORTING, INVESTIGATION AND CONFIRMATION.**

- (1) Reporting of suspected releases.

Owners and/or operators of UST systems must report to the Division within 72 hours and follow the procedures in rule 1200-1-15-.05(3) for any of the following conditions:

- (a) The discovery by owners and/or operators or others of released petroleum at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water).
- (b) Unusual operating conditions observed by owners and/or operators (such as the erratic behavior of petroleum dispensing equipment, the sudden loss of petroleum from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and,
- (c) Monitoring results from a release detection method required under rule 1200-1-15-.04(2) that indicate a release may have occurred unless:
  - 1. The monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring within thirty (30) days does not confirm the initial results; or
  - 2. In case of inventory control, a second consecutive month of data does not confirm the initial result.

- (2) Investigation due to environmental impacts.

When required by the Division, owners and/or operators of UST systems must follow the procedures in rule 1200-1-15-.05(3) to determine if the UST system is the source of environmental impacts. These impacts include the discovery of petroleum (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the Division or brought to its attention by another party.

- (3) Release investigation and confirmation steps.

Unless corrective action is initiated in accordance with rule 1200-1-15-.06, owners and/or operators shall immediately investigate and confirm all suspected releases of petroleum requiring reporting under rule 1200-1-15-.05(1) within 30 days using the following steps:



(Rule 1200-1-15-.05, continued)

- (a) System test. Owners and/or operators must conduct tests (according to the requirements for tightness testing in rule 1200-1-15-.04(3)(c) and rule 1200-1-15-.04(4)(b)) that determine whether a leak exists in that portion of the tank that routinely contains petroleum, or the attached delivery piping, or both.
  - 1. Owners and/or operators must repair, replace or upgrade the UST system, and begin corrective action in accordance with rule 1200-1-15-.06 if the test results for the system, tank, or delivery piping indicate that a leak exists.
  - 2. Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and if environmental contamination is not the basis for suspecting a release.
  - 3. Owners and/or operators must conduct a site check as described in paragraph (b) of this section if the test results for the system, tank, and delivery piping do not indicate that a leak exists but environmental contamination is the basis for suspecting a release.
- (b) Site check. Owners and/or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and/or operators must consider the nature of the stored petroleum, the type of initial alarm or cause for suspicion, the type of backfill, the depth of ground water, and other factors appropriate for identifying the presence and source of the release.
  - 1. If the test results for the excavation zone or the UST site indicate that a release has occurred, owners and/or operators must begin corrective action in accordance with rule 1200-1-15-.06;
  - 2. If the test results for the excavation zone or the UST site do not indicate that a release has occurred, further investigation is not required.
- (4) Reporting and cleanup of spills and overfills.
  - (a) Owners and/or operators of UST systems must contain and immediately clean up a spill or overflow and report to the Division within 72 hours and begin corrective action if a spill or overflow of petroleum results in a release to the environment that exceeds 25 gallons or that causes a sheen on nearby surface water; or
  - (b) Owners and operators of UST systems must contain and immediately clean up a spill or overflow of petroleum that is less than 25 gallons. If cleanup cannot be accomplished within 72 hours owners and/or operators must immediately notify the Division.

**Authority:** T.C.A. §§4-5-201 et seq., 68-215-107, and 68-215-201 et seq. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed July 28, 1995; effective October 10, 1995. Amendment filed February 4, 1998; effective April 20, 1998. Amendment filed March 6, 2000; effective May 20, 2000.

**1200-1-15-.06 RELEASE RESPONSE AND CORRECTIVE ACTION FOR UST SYSTEMS CONTAINING PETROLEUM.**

- (1) General.

Owners and/or operators of petroleum UST systems shall, in response to a confirmed release from the UST system, comply with the requirements of rule 1200-1-15-.06.

(Rule 1200-1-15-.06, continued)

(2) Initial response.

Upon confirmation of a release in accordance with rule 1200-1-15-.05(3) or after a release from the UST system is identified in any other manner, owners and/or operators shall perform the following initial response actions:

- (a) Report the release to the appropriate field office of the Division, in writing, within 72 hours;
- (b) Take immediate action to prevent any further release of the petroleum into the environment; and
- (c) Take immediate action to identify and mitigate fire, explosion, and vapor hazards.

(3) Initial abatement measures and site check.

- (a) Unless directed to do otherwise by the Division, owners and/or operators shall perform the following abatement measures:
  - 1. Remove as much of the petroleum from the UST system as is necessary to prevent further release to the environment;
  - 2. Visually inspect any above ground releases or exposed below ground releases and prevent further migration of the petroleum into surrounding soils and ground water;
  - 3. Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);
  - 4. Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and/or operator shall comply with applicable state and local requirements;
  - 5. Measure for the presence of a release where contamination is most likely to be present at the UST site, unless the presence and source of the release have been confirmed in accordance with the site check required by rule 1200-1-15-.05(3)(b) or the closure site assessment of rule 1200-1-15-.07(3)(a). In selecting sample types, sample locations, and measurement methods, the owner and operator shall consider the nature of the stored petroleum, the type of backfill, depth to ground water and other factors as appropriate for identifying the presence and source of the release; and
  - 6. Investigate to determine the possible presence of free product, and begin free product removal in accordance with a schedule established by the Division and in accordance with rule 1200-1-15-.06(4).
  - 7. All drinking water supplies (which includes both wells and springs) within one-tenth (0.1) mile radius of the petroleum site shall be investigated for the presence of a release.
  - 8. Survey the area around the leaking petroleum site to determine whether any local residents or businesses use ground water as a source of drinking water.
- (b) Within 30 days after release confirmation owners and/or operators shall submit to the Division, in a format required by the Division, a report summarizing the initial abatement steps taken under subparagraph (a) of rule 1200-1-15-.06(3) and any resulting information or data.

(Rule 1200-1-15-.06, continued)

(4) Free product removal.

At sites where investigations under rule 1200-1-15-.06(3)(a)6 indicate the presence of free product, owners and/or operators shall remove free product to the maximum extent practicable as determined by the Division while continuing, as necessary, any actions initiated under rule 1200-1-15-.06(2) through rule 1200-1-15-.06(3), or preparing for actions required under rule 1200-1-15-.06(5) through rule 1200-1-15-.06(7). In meeting the requirements of this paragraph, owners and/or operators shall:

- (a) Install an active free product removal system capable of continuous free product removal in accordance with a schedule established by the Division.
- (b) Conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery byproducts in compliance with applicable local, state and federal regulations;
- (c) Use abatement of free product migration as a minimum objective for the design of the free product removal system;
- (d) Handle any flammable products in a safe and competent manner to prevent fires or explosions; and
- (e) Unless directed to do otherwise by the Division, prepare and submit to the Division, within 45 days after confirming a release, and quarterly thereafter, a free product removal report in a format required by the Division, that provides at least the following information. The owner and/or operator or a corrective action system is operational:
  - 1. The name of the person(s) responsible for implementing the free product removal measures;
  - 2. The estimated quantity, type, and thickness of free product observed or measured in wells, boreholes, and excavations;
  - 3. The type of free product recovery system used;
  - 4. Whether any discharge will take place on-site or off-site during the recovery operation and where this discharge will be located;
  - 5. The type of treatment applied to, and the effluent quality expected from, any discharge;
  - 6. The steps that have been or are being taken to obtain necessary permits for any discharge; and
  - 7. The disposition of the recovered free product.

(5) Initial Site Characterization and Site Ranking.

Unless directed to do otherwise by the Division, owners, operators, or a responsible party shall assemble information and conduct a limited investigation of the site and the nature of the release in accordance with this section.

- (a) Data on the nature and estimated quantity of release;

(Rule 1200-1-15-.06, continued)

1. Data from available sources and/or site investigations concerning the following factors: surrounding populations, water quality, use and approximate locations of all drinking water supplies potentially affected by the release, climatological conditions, and land use; and
  2. Results of the site check required under rule 1200-1-15-.06(3)(a)5.
- (b) The responsible party shall conduct a limited investigation of the site; installing four soil borings completed as ground water monitoring wells or follow another investigative plan approved by the Division. Soil and ground water shall be sampled to determine levels of petroleum contamination. The threat of the contamination to the environment and local health and safety shall be evaluated using Technical Guidance Document 014 provided by the Division. The evaluation shall be subject to the review and approval of the Division. The evaluation of the threat presented by the contamination shall include, but is not limited to the following items:
1. The permeability of the soil;
  2. The suitability of the ground water for a drinking water supply as defined by rule 1200-1-15-.01(3)(p);
  3. The depth to ground water;
  4. The ground water flow rate;
  5. The level of ground water contamination caused by the release in comparison with the applicable ground water clean-up levels as listed in Appendix 4;
  6. The level of soil contamination in comparison to the applicable soil clean-up levels as listed in Appendix 5;
  7. The proximity of nearby surface water;
  8. The distance from the contamination to the nearest water supply (public and/or private);
  9. The distance between the contamination and subsurface structures such as basements, sewers, utilities, etc.
  10. The physical and chemical characteristics of the petroleum, including its toxicity, persistence and potential for migration; and
  11. The proximity, quality and current and future uses of surface waters.

This evaluation shall determine whether the petroleum site is subject to investigation and corrective action per rule 1200-1-15-.06(6) & (7) or subject to the monitoring only program described in rule 1200-1-15-.06(5)(e). Owners, operators and/or a responsible party shall commence investigation and corrective action at a petroleum site if any of the following conditions are discovered: the impacted ground water is classified as a 'drinking water supply'; the conditions are discovered; the impacted ground water is classified surface water on or near the petroleum site is visibly impacted by a petroleum product; or free product is present as a result of the release.

- (c) Within 90 days of release confirmation, owners, operators and/or a responsible party shall submit the information collected in compliance with subparagraph (a) of this rule to the Division in a manner that demonstrates its applicability and technical adequacy, or in a format and

(Rule 1200-1-15-.06, continued)

according to the schedule required by the Division. Also owners, operators or a responsible party shall include the information collected in compliance with subparagraph (b) of this rule to the Division in accordance with a schedule and in a format established by Technical Guidance Document 014.

- (d) Owners, operators, and/or a responsible party shall commence investigation and corrective action at a petroleum site in accordance with rule 1200-1-15-.06(6) & (7) if the findings of the evaluation per 1200-1-15-.06(5)(b) evidence the condition of the site is a significant threat to public health and environment, as defined in Technical Guidance Document 014. The responsible party shall define the aerial and vertical extent of soil and/or ground water contamination to the applicable clean-up level as defined in Appendices 4 and 5 by site specific conditions. The investigation shall be completed in accordance with a schedule and a report submitted in a format established by the Division. Corrective action shall proceed as described in paragraph 1200-1-15-.06(7).
  - (e) All other petroleum sites shall enter the monitoring only program with site conditions monitored semi-annually as directed by the Division. If at any time soil and/or ground water analytical results indicate a significant increase in the level of petroleum contamination or site conditions change and petroleum vapors, free product or other public health and/or environmental problems arise, then the responsible party shall begin investigation and corrective action as described in paragraph 1200-1-15-.06(6 & (7). If the owner and/or operator begins investigation and/or corrective action work at the site at the direction of the Division, then the costs are Fund eligible in accordance with Rule 1200-1-15-.09, provided the site is Fund eligible.
  - (f) Responsible parties with petroleum sites in the monitoring only program may request a Compliance with Corrective Action Letter from the Division if the level of soil and ground water contamination has remained constant or decreased for a significant time period and the relative environmental and public health and safety risks are low. Once a site enters the monitoring only program, the Division shall either issue a Compliance with Corrective Action Letter to the responsible party or inform the responsible party of the need to perform further investigation and/or corrective action at the site. The Division shall inform the responsible party of this decision no sooner than two years from the date the site enters the monitoring only program but no later than four years from the date the site enters the monitoring only program.
  - (g) Owners and/or operators with petroleum sites may choose to begin corrective action to resolve soil and/or ground water contamination at sites designated for the monitoring program. These owner and/or operators shall proceed under the direction of the Division in accordance with paragraph 1200-1-15-.06 (7). The costs for investigations and corrective action beyond the monitoring only program requirements at these sites shall not be the liability of the Fund.
- (6) Investigations for soil and ground water cleanup.

Investigations for soil and ground water cleanup shall be conducted at sites where the findings of the evaluation per rule 1200-1-15-.06(5)(b) evidence the conditions of the sites pose a significant threat to public health and the environment as defined in Technical Guidance Document 014. In meeting the requirements of this paragraph responsible parties, owner and/or operators shall:

- (a) Determine the full extent and location of soils contaminated by the release and the presence and concentrations of dissolved product contamination in the ground water to applicable clean up levels;
- (b) Conduct investigations of the release, the release site, and the surrounding area possibly affected by the release; and

(Rule 1200-1-15-.06, continued)

- (c) Submit the information collected under subparagraph (a) of this paragraph in a format and schedule established by the Division

(7) Corrective action plan.

- (a) At any point after reviewing the information submitted in compliance with rule 1200-1-15-.06, the Division may require owners and/or operators to submit additional information or to develop and submit a Corrective Action Plan for responding to contaminated soils and ground water. If a corrective action plan is required per 1200-1-15-.06(5), owners and/or operators shall submit the plan according to a schedule and format established by the Division. Also, owners and/or operators of sites directed by rule 1200-1-15-.06(5)(e) to enter the Monitoring Only Program may choose to submit a Corrective Action Plan for responding to contaminated soil and ground water. However, costs associated with work beyond the requirements of the Monitoring Only Program are not Fund eligible. In either case, owners and/or operators are responsible for submitting a plan that provides for adequate protection of human health and the environment as determined by the Division, and shall modify their plan as necessary to meet this standard.
- (b) The Division will approve the Corrective Action Plan only after ensuring that implementation of the plan will adequately protect human health, safety, and the environment. In making this determination, the Division should consider the following factors as appropriate:
  - 1. The physical and chemical characteristics of the petroleum, including its toxicity, persistence, and potential for migration;
  - 2. The hydrogeologic characteristics of the facility and the surrounding area;
  - 3. The proximity, quality, and current and future uses of nearby surface water and ground water;
  - 4. The potential effects of residual contamination on nearby surface water and ground water;
  - 5. An exposure assessment; and
  - 6. Any information assembled in compliance with rule 1200-1-15-.06.
- (c) Upon approval of the Corrective Action Plan or as directed by the Division, owners and/or operators shall implement the plan, including modifications to the plan made by the Division. They shall monitor, evaluate, and report the results of implementing the plan in accordance with a schedule and in a format established by the Division.
- (d) Owners and/or operators may, in the interest of minimizing environmental contamination and promoting more effective cleanup, begin cleanup of soil and ground water before the Corrective Action Plan is approved provided that they:
  - 1. Notify the Division of their intention to begin cleanup;
  - 2. Comply with any conditions imposed by the Division, including halting cleanup or mitigating adverse consequences from cleanup activities; and
  - 3. Incorporate these self-initiated cleanup measures in the Corrective Action Plan that is submitted to the Division for approval.

The cost associated with such activity will not be Fund eligible, if after review, the Division does not approve the work performed.

(Rule 1200-1-15-.06, continued)

- (e) Ground water contaminated by petroleum from UST systems shall be addressed in the Corrective Action Plan and meet the levels as listed in Appendix 4 for drinking water supplies and non-drinking water supplies. The Corrective Action Plan shall determine if the contaminated ground water met the definition of a "drinking water supply" before the contamination occurred and propose site cleanup levels based on the category of ground water.
1. Soil contaminated by petroleum from UST systems must be addressed in the Corrective Action Plan. The level of soil cleanup shall follow Appendix 5. Soil cleanup levels shall vary depending upon the permeability of the soil and whether the ground water below the site is a "drinking water supply" or "non-drinking water supply". The permeability of the soil at the site and the type ground water below the site shall be reported in the Corrective Action Plan.
  2. For sites where the background level of petroleum, due to natural conditions, exceeds the levels of cleanup required for soil and/or ground water in Appendices 4 and 5, then the owner and/or operator shall only be required to cleanup to the naturally occurring background levels.
  3. After an owner and/or operator has treated petroleum contamination at a site for an extended period of time and the treatment system for soil and/or ground water has reached asymptotic levels for contaminant removal, then the owner and/or operator may request a site specific standard from the Commissioner. The site specific standard request shall document the type of treatment used at the site, the length of treatment, and that the level of contaminant in the soil and/or ground water has remained relatively constant for at least four (4) quarters. The site specific standard request shall also contain the parameters in paragraph 5 below. If the Commissioner does not act on the request within 90 days of receipt, it shall be deemed to be denied. The owner and/or operator may appeal any denial of a site specific standard request to the Board as set forth in this rule and Rule 1200-1-15-.11. The Commissioner shall submit an annual report to the Board documenting the site specific standards granted during the calendar year.
  4. If the owner and/or operator believes that a particular site should not be subject to the cleanup requirements in Appendices 4 and 5, the owner and/or operator may petition the Commissioner for a site specific standard. The site specific standard request shall be submitted to the Division in a format required by the Division. The owner and/or operator shall, at a minimum, include the following in the site specific standard request:
    - (i) The physical and chemical characteristics of petroleum; including its toxicity, persistence, and potential for migration;
    - (ii) The hydrogeologic characteristics of the petroleum site and the surrounding land;
    - (iii) The proximity, quality, and current and future uses of ground water;
    - (iv) An exposure assessment; and
    - (v) The proximity, quality, and current and future uses of surface waters.

A site specific standard request may be submitted either in lieu of a Corrective Action Plan or in conjunction with a Corrective Action Plan. If the owner and/or operator chooses to submit a site specific standard request in lieu of a Corrective Action Plan, the site specific standard request shall be submitted on the due date of the Corrective Action Plan. If a site specific standard request is submitted in lieu

(Rule 1200-1-15-.06, continued)

of a Corrective Action Plan, the tank owner and/or operator shall submit a Corrective Action Plan if the Commissioner denies the site specific standard request.

Should the Commissioner deny the properly completed site specific standard request or fail to act within ninety (90) calendar days of receipt, the owner and/or operator may petition the Board for the site specific standard pursuant to rule 1200-1-15-.11. The site specific standard request shall include all items listed above, at a minimum.

5. If the owner and/or operator has been granted a site specific standard based on a request described in part 5. of this subparagraph and it is later determined that the information supplied in the request was not accurate or there has been a change in the information supplied in subparts 5.(i) through (v), then the Commissioner may revoke the site specific standard. If the Commissioner revokes a site specific standard, the owner and/or operator may petition the Board for a hearing on the revocation pursuant to rule 1200-1-15-.11.

(8) Public participation

- (a) For each confirmed release that requires a Corrective Action Plan, the owner and/or operator shall provide notice to the public by means designed to reach those members of the public directly affected by the release and the planned corrective action. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by field staff.
- (b) The Division shall make site release information and decisions concerning the Corrective Action Plan available to the public for inspection upon request.
- (c) Before approving a Corrective Action Plan, the Division may hold a public meeting to consider comments on the proposed Corrective Action Plan if there is sufficient public interest, or for any other reason.
- (d) The Division shall give public notice that complies with subparagraph (a) of rule 1200-1-15-.06(8) if implementation of an approved Corrective Action Plan does not achieve the established cleanup levels in the plan and termination of that plan is under consideration by the Division.

**Authority:** T.C.A. §§4-5-201 et seq. and 68-215-107. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed July 28, 1995; effective October 10, 1995. Amendment filed August 6, 1996; effective October 20, 1996. Amendment filed February 4, 1998; effective April 20, 1998.

**1200-1-15-.07 OUT-OF-SERVICE UST SYSTEMS AND CLOSURE**

(1) Temporary closure.

- (a) When an UST system is temporarily closed, owners and/or operators must continue operation and maintenance of corrosion protection in accordance with rule 1200-1-15-.03(2), and any release detection in accordance with rule 1200-1-15-.04. Rule 1200-1-15-.05 and rule 1200-1-15-.06 must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.



(Rule 1200-1-15-.07, continued)

- (b) When an UST system is temporarily closed for 3 months or more, owners and/or operators must also comply with the following requirements:
    - 1. Leave vent lines open and functioning; and
    - 2. Cap and secure all other lines, pumps, manways, and ancillary equipment.
    - 3. File amended notification form showing the tank system as Temporarily Out of Use.
  - (c) When an UST system is temporarily closed for more than 12 months, owners and/or operators must permanently close the UST system if it does not meet either performance standards in rule 1200-1-15-.02(1) for new UST systems or the upgrading requirements in rule 1200-1-15-.02(2), except that the spill and overfill equipment requirements do not have to be met. Owners and/or operators must permanently close substandard UST systems at the end of this 12-month period in accordance with rule 1200-1-15-.07(2) through rule 1200-1-15-.07(5), unless the Division provides a written extension of the 12-month temporary closure period. However, the temporary closure period, including any extensions granted by the Division, shall not extend beyond December 22, 1999, for any UST system that does not meet the requirements in either rule 1200-1-15-.02(1) or 1200-1-15-.02(2). Owners and/or operators must complete a site assessment in accordance with rule 1200-1-15-.07(3) before an extension can be applied for.
- (2) Permanent closure and changes-in-service.
- (a) At least 30 days before beginning either permanent closure or a change-in-service under paragraphs (b) and (c) of rule 1200-1-15-.07(2) owners and/or operators must submit a site closure plan to the Division to permanently close or make the change-in-service, unless such action is in response to corrective action. The required assessment of the excavation zone under rule 1200-1-15-.07(3) must be performed after notifying the Division but before completion of the permanent closure or a change-in-service. Results of all samples taken during the closure of the underground storage tank system or change in service of the underground storage tank system must be reported to the Department within sixty (60) days of collection. Samples may not be taken while the underground storage tank system is in operation.
  - (b) To permanently close a tank, owners and/or operators must empty and clean it by removing all liquids and accumulated sludges. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material such as a cement compound, sand, gravel, etc. The inert solid material must have a specific gravity greater than 1.0.
  - (c) Continued use of an UST system to store a non-regulated substance is considered a change-in-service. Before a change-in-service, owners and/or operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with rule 1200-1-15-.07(3).
  - (d) Should an owner and/or operator elect to excavate and remove a tank from the site, such excavation and removal must be done in accordance with Appendix 6.
  - (e) Once a tank has been excavated, it may be stored on-site or transported off-site for storage or disposal. Excavated tanks which have not been cut into sections for disposal shall be considered in storage and shall at all times, while in storage, be maintained in a vapor-free state and stored in accordance with Appendix 5.
  - (f) Tanks may not be stored at a UST facility unless they are maintained in a vapor-free state, stored in accordance with Appendix 6, and one of the following conditions are met:

(Rule 1200-1-15-.07, continued)

1.
    - (i) Tanks have been cleaned by removal of all liquids and accumulated sludges; and
    - (ii) Tanks have been purged of vapors so that any explosive levels do not exceed 20 percent of the lower flammable limit for the regulated substance; and
    - (iii) Tanks have an opening or openings installed which comprise a minimum of 10 percent of the total tank surface area. Such openings will not be considered openings if they are in contact or contiguous with the ground or surface on which the tank may be resting; or
  2. 1.(i) and (ii) above have been complied with and there are no remaining USTs either in use or in a temporarily closed condition at the facility; or
  3. Tanks which are removed from a UST facility and are intended for reuse at the same or another facility as USTs may be stored at a UST facility if the owner and/or operator meets the conditions described in 1.(i) and (ii), and either removes the tank off-site from a UST facility or puts it back into service within 30 days of excavation.
- (g) Tanks must be stored in a manner which does not pose safety hazards. Tanks must be stored in a position with the tank's center of gravity closest to the ground. Tanks may not be stacked. Tanks must be secured so that they will not roll or slide across a level or sloping ground surface.
- (h) Transportation and disposal of tanks will be subject to all applicable Federal, State, and local laws and regulations concerning the safe transportation and proper disposal of such materials.

[Note: The following publications provide information on this subject: American Petroleum Institute Recommended Practice 1604 (Second Edition, December 1987), Removal and Disposal of Used Underground Petroleum Storage Tanks; American Petroleum Institute Publication 2015 (Third Edition, September 1985), Cleaning Petroleum Storage Tanks; American Petroleum Institute Recommended Practice 1631 (Second Edition, December 1987), Interior Lining of Underground Storage Tanks. The National Institute for Occupational Safety and Health Criteria Document 80-106 (1980 Edition), Criteria for a Recommended Standard . . . Working in Confined Space may be used as guidance for conducting safe closure procedures at some petroleum tanks.]

(3) Assessing the site at closure or change-in-service.

- (a) Before permanent closure or a change-in-service is completed, owners and/or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, owners and/or operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to ground water, and other factors appropriate for identifying the presence of a release. The requirements of this paragraph are satisfied if one of the external release detection methods allowed in rule 1200-1-15-.04(3)(e) and (f) is operating in accordance with the requirements in rule 1200-1-15-.04(3) at the time of closure, and indicates no release has occurred.
- (b) Transportation and disposal of tanks will be subject to all applicable Federal, State, and local laws and regulations concerning the safe transportation and proper disposal of such materials.

[Note: The following publications provide information on this subject: American Petroleum Institute Recommended Practice 1604 (Second Edition, December 1987), Removal and Disposal of Used Underground Petroleum Storage Tanks; American Petroleum Institute Publication 2015 (Third Edition, September 1985), Cleaning Petroleum Storage Tanks; American Petroleum

(Rule 1200-1-15-.07, continued)

Institute Recommended Practice 1631 (Second Edition, December 1987), Interior Lining of Underground Storage Tanks. The National Institute for Occupational Safety and Health Criteria Document 80-106 (1980 Edition), Criteria for a Recommended Standard. Working in Confined Space may be used as guidance for conducting safe closure procedures at some petroleum tanks.]

(4) Applicability to previously closed UST systems.

When directed by the Division, the owner and/or operator of an UST system permanently closed before December 22, 1988 must assess the excavation zone and close the UST system in accordance with rule 1200-1-15-.07 if releases from the UST may, in the judgment of the Division, pose a current or potential threat to human health and the environment.

(5) Closure records.

Owners and/or operators must maintain records in accordance with rule 1200-1-15-.03(5) that are capable of demonstrating compliance with closure requirements under rule 1200-1-15-.07. The results of the excavation zone assessment required in rule 1200-1-15-.07(3) must be maintained for at least 3 years after completion of permanent closure or change-in-service in one of the following ways:

- (a) By the owners and/or operators who took the UST system out of service;
- (b) By the current owners and/or operators of the UST system site; or
- (c) By mailing these records to the Division if they cannot be maintained at the closed facility.

**Authority:** T.C.A. §§4-5-201 et seq., 68-215-101 et seq., 68-215-113, and 68-215-201 et seq. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed July 28, 1995; effective October 10, 1995. Amendment filed March 6, 2000; effective May 20, 2000.

## Appendix 1

OMB NO. 2050-0046, Approval Expires 9/30/91  
EPA form 7530-1 (Revised 9/88)

Notification for Underground Storage Tanks		STATE USE ONLY	
<small>State Agency Name and Address</small> UST Division, 200 Doctor's Bldg., 706 Church St., TN DHE, Nashville, TN 37247-4101		ID NUMBER _____	
TYPE OF NOTIFICATION		DATE RECEIVED _____	
<input type="checkbox"/> A. NEW FACILITY <input type="checkbox"/> B. AMENDED <input type="checkbox"/> C. CLOSURE _____ No. of tanks at facility      _____ No. of continuation sheets attached		A. Date Entered Into Computer _____ B. Data Entry Clerk Initials _____ C. Owner Was Contacted to Clarify Responses, Comments _____	
INSTRUCTIONS			
Please type or print in ink all items except "signature" in section V. This form must be completed for each location containing underground storage tanks. If more than five (5) tanks are owned at this location, photocopy the following sheets, and staple continuation sheets to the form.			
GENERAL INFORMATION			
<p>Notification is required by Federal law for all underground tanks that have been used to store regulated substances since January 1, 1974, that are in the ground as of May 8, 1986, or that are brought into use after May 8, 1986. The information requested is required by Section 9002 of the Resource Conservation and Recovery Act, (RCRA), as amended.</p> <p>The primary purpose of this notification program is to locate and evaluate underground tanks that store or have stored petroleum or hazardous substances. It is expected that the information you provide will be based on reasonably available records, or in the absence of such records, your knowledge, belief, or recollection.</p> <p>Who Must Notify? Section 9002 of RCRA, as amended, requires that, unless exempted, owners of underground tanks that store regulated substances must notify designated State or local agencies of the existence of their tanks. Owner means—</p> <p>a) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances; and</p> <p>b) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such tank immediately before the discontinuation of its use.</p> <p>c) If the State agency so requires, any facility that has undergone any changes to facility information or tank system status (only amended tank information needs to be included).</p> <p>What Tanks Are Included? Underground storage tank is defined as any one or combination of tanks that (1) is used to contain an accumulation of "regulated substances," and (2) whose volume (including connected underground piping) is 10% or more beneath the ground. Some examples are underground tanks storing: 1. Gasoline, used oil, or diesel fuel; and 2. Industrial solvents, pesticides, herbicides or fumigants.</p> <p>What Tanks Are Excluded? Tanks removed from the ground are not subject to notification. Other tanks excluded from notification are:</p> <p>1. farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;</p> <p>2. tanks used for storing heating oil for consumptive use on the premises where stored;</p> <p>3. septic tanks;</p> <p>4. pipeline facilities (including gathering lines) regulated under the Natural Gas Pipeline Safety Act of 1968, or the Hazardous Liquid Pipeline Safety Act of 1979, or which is an intrastate pipeline facility regulated under State laws;</p> <p>5. surface impoundments, pits, ponds, or lagoons;</p> <p>6. storm water or waste water collection systems;</p> <p>7. flow-through process tanks;</p> <p>8. liquid traps or associated gathering lines directly related to oil or gas production and gathering operations;</p> <p>9. storage tanks situated in an underground area (such as a basement, cellar, mine-working drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.</p> <p>What Substances Are Covered? The notification requirements apply to underground storage tanks that contain regulated substances. This includes any substance defined as hazardous in section 101 (14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), with the exception of those substances regulated as hazardous waste under Subtitle C of RCRA. It also includes petroleum, e.g., crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).</p> <p>Where To Notify? Send completed forms to:</p> <p style="text-align: right;">Underground Storage Tank Division 200 Doctor's Building 706 Church Street Tennessee Department of Health and Environment Nashville, TN 37247-4101</p> <p>When To Notify? 1. Owners of underground storage tanks in use or that have been taken out of operation after January 1, 1974, but still in the ground, must notify by May 8, 1986. 2. Owners who bring underground storage tanks into use after May 8, 1986, must notify within 30 days of bringing the tanks into use. 3. If the State requires notification of any amendments to the facility send information to State agency immediately.</p> <p>Penalties: Any owner who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or for which false information is submitted.</p>			
I. OWNERSHIP OF TANK(S)		II. LOCATION OF TANK(S)	
Owner Name (Corporation, Individual, Public Agency, or Other Entity) _____ Street Address _____ _____ City _____ State _____ ZIP Code _____ County _____ Phone Number (include Area Code) _____		If required by State, give the geographic location of tanks by degrees, minutes, and seconds. Example: Lat. 42, 36, 12 N Long. 83, 24, 17 W Latitude _____ Longitude _____ (If same as Section I, mark box here <input type="checkbox"/> ) Facility Name or Company Site Identifier, as applicable _____ Street Address (P.O. Box not acceptable) _____ City _____ State _____ Zip code _____ County _____ Municipality _____	

(Appendix 1, continued)

III. TYPE OF OWNER		IV. INDIAN LANDS				
<input type="checkbox"/> Federal Government <input type="checkbox"/> State Government <input type="checkbox"/> Local Government	<input type="checkbox"/> Commercial <input type="checkbox"/> Private	Tanks are located on land within an Indian Reservation or on other trust lands. <input type="checkbox"/>  Tanks are owned by native American nation, tribe, or individual. <input type="checkbox"/>	Tribe or Nation: _____  _____			
V. TYPE OF FACILITY						
Select the Appropriate Facility Description						
_____ Gas Station _____ Petroleum Distributor _____ Air Taxi (Airline) _____ Aircraft Owner _____ Auto Dealership	_____ Railroad _____ Federal - Non-Military _____ Federal - Military _____ Industrial _____ Contractor	_____ Trucking/Transport _____ Utilities _____ Residential _____ Farm _____ Other (Explain) _____				
VI. CONTACT PERSON IN CHARGE OF TANKS						
Name	Job Title	Address	Phone Number (Include Area Code)			
VII. FINANCIAL RESPONSIBILITY						
I have met the financial responsibility requirements in accordance with 40 CFR Subpart H <input style="width: 50px; height: 20px;" type="checkbox"/>						
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; vertical-align: top;">           Check All that Apply  <input type="checkbox"/> Self Insurance  <input type="checkbox"/> Commercial Insurance  <input type="checkbox"/> Risk Retention Group         </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> Guarantee  <input type="checkbox"/> Surety Bond  <input type="checkbox"/> Letter of Credit         </td> <td style="width: 33%; vertical-align: top;"> <input type="checkbox"/> State Funds  <input type="checkbox"/> Trust Fund  <input type="checkbox"/> Other Method Allowed Specify _____          _____         </td> </tr> </table>				Check All that Apply <input type="checkbox"/> Self Insurance <input type="checkbox"/> Commercial Insurance <input type="checkbox"/> Risk Retention Group	<input type="checkbox"/> Guarantee <input type="checkbox"/> Surety Bond <input type="checkbox"/> Letter of Credit	<input type="checkbox"/> State Funds <input type="checkbox"/> Trust Fund <input type="checkbox"/> Other Method Allowed Specify _____ _____
Check All that Apply <input type="checkbox"/> Self Insurance <input type="checkbox"/> Commercial Insurance <input type="checkbox"/> Risk Retention Group	<input type="checkbox"/> Guarantee <input type="checkbox"/> Surety Bond <input type="checkbox"/> Letter of Credit	<input type="checkbox"/> State Funds <input type="checkbox"/> Trust Fund <input type="checkbox"/> Other Method Allowed Specify _____ _____				
VIII. CERTIFICATION (Read and sign after completing all sections)						
I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.						
Name and official title of owner or owner's authorized representative (Print)	Signature	Date Signed				
EPA estimates public reporting burden for this form to average 30 minutes per response including time for reviewing instructions, gathering and maintaining the data needed and completing and reviewing the form. Send comments regarding this burden estimate to Chief, Information Policy Branch PM-223, U.S. Environmental Protection Agency, 401 M Street, Washington D.C. 20460, marked "Attention Desk Officer for EPA." This form amends the previous notification form as printed in 40 CFR Part 280, Appendix I. Previous editions of this notification form may be used while supplies last.						

Page 2

(Appendix 1, continued)

IX. DESCRIPTION OF UNDERGROUND STORAGE TANKS (Complete for each tank at this location.)					
Tank Identification Number	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____	Tank No. ____
<b>1. Status of Tank</b> (mark only one)					
Currently in Use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Temporarily Out of Use (Remember to fill out section X.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Permanently Out of Use (Remember to fill out section X.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amendment of Information	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>2. Date of Installation (mo./year)</b>					
<b>3. Estimated Total Capacity (gallons)</b>					
<b>4. Material of Construction</b> (Mark all that apply)					
Asphalt Coated or Bare Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cathodically Protected Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Epoxy Coated Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Composite (Steel with Fiberglass)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fiberglass Reinforced Plastic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lined Interior	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Double Walled	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Polyethylene Tank Jacket	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concrete	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Excavation Liner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unknown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, Please specify					
Has tank been repaired?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>5. Piping (Material)</b> (Mark all that apply)					
Bare Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Galvanized Steel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fiberglass Reinforced Plastic	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Copper	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cathodically Protected	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Double Walled	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Secondary Containment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Unknown	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other, Please specify					
<b>6. Piping (Type)</b> (Mark all that apply)					
Suction: no valve at tank	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Suction: valve at tank	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pressure	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gravity Feed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has piping been repaired?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Page 3

(Appendix 1, continued)

Tank Identification Number	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____	Tank No. _____
<b>7. Substance Currently or Last Stored In Greatest Quantity by Volume</b>					
Gasoline	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Diesel	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Gasohol	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Kerosene	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Heating Oil	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Used Oil	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Other, Please specify	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Hazardous Substance CERCLA name and/or, CAS number</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>Mixture of Substances Please specify</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>X. TANKS OUT OF USE, OR CHANGE IN SERVICE</b>					
<b>1. Closing of Tank</b>					
A. Estimated date last used (mo./day/year)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
B. Estimate date tank closed (mo./day/year)	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
C. Tank was removed from ground	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
D. Tank was closed in ground	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
E. Tank filled with inert material	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Describe	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
F. Change in service	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<b>2. Site Assessment Completed</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Evidence of a leak detected	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Page 4

(Appendix 1, continued)

XI. CERTIFICATION OF COMPLIANCE (COMPLETE FOR ALL NEW AND UPGRADED TANKS AT THIS LOCATION)											
Tank Identification Number	Tank No. _____		Tank No. _____		Tank No. _____		Tank No. _____		Tank No. _____		
<b>1. Installation</b>											
A. Installer certified by tank and piping manufacturers	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
B. Installer certified or licensed by the implementing agency	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
C. Installation inspected by a registered engineer	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
D. Installation inspected and approved by implementing agency	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
E. Manufacturer's installation check-lists have been completed	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
F. Another method allowed by State agency. Please specify.	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
<b>2. Release Detection (Mark all that apply)</b>											
	TANK	PIPING	TANK	PIPING	TANK	PIPING	TANK	PIPING	TANK	PIPING	
A. Manual tank gauging	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
B. Tank tightness testing	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
C. Inventory controls	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
D. Automatic tank gauging	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
E. Vapor monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
F. Groundwater monitoring	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
G. Interstitial monitoring double walled tank/piping	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
H. Interstitial monitoring/secondary containment	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
I. Automatic line leak detectors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
J. Line tightness testing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
K. Other method allowed by Implementing Agency. Please specify.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>3. Spill and Overfill Protection</b>											
A. Overfill device installed	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
B. Spill device installed	<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>		
<p>OATH: I certify the information concerning installation that is provided in section XI is true to the best of my belief and knowledge.</p> <p>Installer: _____ Signature _____ Date _____</p> <p>Position _____ Company _____</p>											

Page 5



## Appendix 2 — Statement for Shipping Tickets and Invoices

Note - A Federal law (the Resource Conservation and Recovery Act (RCRA), as amended (Pub. L. 98-616)) requires owners of certain underground storage tanks to notify designated State or local agencies by May 8, 1986, of the existence of their tanks. The Tennessee Petroleum Underground Storage Tank Act (*T.C.A. §68-215-101et seq.*) also contains notification requirements. Notifications for tanks brought into use after July 1, 1989 must be made 15 days in advance of installation. Consult EPA's regulations, issued on November 8, 1986 (40 CFR Part 280) and state law (*T.C.A. §68-215-101et seq.*) and state regulations (Chapter 1200-1-15) to determine if you are affected by these laws and regulations.

## Appendix 3 - Change of Ownership Form

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION Page 9 of 25 Pages  
DIVISION OF UNDERGROUND STORAGE TANKS

AMENDED NOTIFICATION FOR UNDERGROUND STORAGE TANKS  
SELLER REPORTING CHANGE OF OWNERSHIP OF TANKS

## INSTRUCTIONS and GENERAL INFORMATION

Who Must Notify? In the case of a sale of tanks, the seller must submit the amended notification form and must also inform the buyer of the notification requirement.

When To Notify? Any change in the status of the tanks at a petroleum underground storage tank facility must be reported within thirty (30) days of such change.

Where To Notify? Send completed forms to:  
Underground Storage Tank Division  
200 Doctor's Building  
706 Church Street  
Tennessee Department of Environment & Conservation  
Nashville, TN 37243-1541

Penalties: Any seller who knowingly fails to notify or submits false information shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or for which false information is submitted.

## STATE USE ONLY

ID NUMBER

DATE RECEIVED

A. Date Entered Into Computer

B. Data Entry Clerk Initials

C. Owner Was Contacted to

Clarify Responses, Comments

Please type or print in ink all items except "signature" in section

ID NUMBER

## I. OWNERSHIP OF TANK(S)

Seller's Name (Corporation, Individual, Public Agency, or Other Entity)

Street Address

City

State

ZIP Code

County

Phone Number (Include Area Code)

Buyer's Name (Corporation, Individual, Public Agency, or Other Entity)

Street Address

City

State

ZIP Code

County

Phone Number (Include Area Code)

## II. LOCATION OF TANK(S)

Give the County Tax Map and Parcel numbers for this location:

Map #

Parcel #

Facility Name or Company Site Identifier, as applicable

Street Address (P.O. Box not acceptable)

City

State

Zip Code

County

Municipality

## III. BUYER INFORMED BY SELLER

The seller informed the buyer of the notification requirement on \_\_\_\_\_ by: \_\_\_\_\_ (date)

(Mark all that apply.)

\_\_\_\_\_ mail

\_\_\_\_\_ certified mail

\_\_\_\_\_ language in sales contract

\_\_\_\_\_ other (explain) \_\_\_\_\_

## IV. CERTIFICATION (Read and sign after completing all sections)

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this and all attached document, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Name and official title

(Print)

Signature

Date Signed



CN-0811

## Appendix 4

## PETROLEUM CONTAMINATION CLEANUP LEVELS

## GROUND WATER CLEANUP LEVEL

	BENZENE LEVEL	TOTAL PETROLEUM HYDROCARBON LEVEL
DRINKING WATER	0.005 PPM	0.100 PPM
NON-DRINKING WATER	0.070 PPM	1.0 PPM

## Appendix 5

PETROLEUM CONTAMINATION CLEANUP LEVELS  
BENZENE CLEANUP LEVELS

SOIL PERMEABILITY	>10 <sup>-4</sup> CM/SEC	10 <sup>-4</sup> to 10 <sup>-6</sup> CM/SEC	>10 <sup>-6</sup> CM/SEC
SOIL CLEANUP LEVEL		BENZENE LEVEL IN PPM	
DRINKING WATER	5	25	50
NON-DRINKING WATER	25	50	100

## TOTAL PETROLEUM HYDROCARBON CLEANUP LEVELS

SOIL PERMEABILITY	>10 <sup>-4</sup> CM/SEC	10 <sup>-4</sup> to 10 <sup>-6</sup> CM/SEC	<10 <sup>-6</sup> CM/SEC
SOIL CLEANUP LEVEL		TPH in PPM	
DRINKING WATER	100	250	500
NON-DRINKING WATER	250	500	1000

APPENDIX 6  
REMOVAL OF UNDERGROUND TANKS

(1) Preparation

- (a) Drain product piping into the tank, being careful to avoid any spillage. Cap or remove product piping.
- (b) Remove liquids and residues from the tank by using explosion-proof or air-driven pumps. Pump motors and suction hoses must be bonded to the tank or otherwise grounded to prevent electrostatic ignition hazards. It may be necessary to use a hand pump to remove the last few inches of liquid from the bottom of the tank.

NOTE: (The Federal Resource Conservation and Recovery Act (RCRA) 42 U.S.C. Section 6901 et seq., and the Tennessee Hazardous Waste Management Act (HWMA) Part 1 T.C.A. §68-46-101 et seq. place restrictions on disposal of certain residues that may be present in some underground storage tanks. Residues from tanks that have held leaded gasoline should be treated with extreme caution. Lead compounds and other residues in the tank may be classified as hazardous wastes).

- (c) Excavate to the top of tank.
- (d) Remove the fill pipe, gauge pipe, vapor recovery truck connection, submersible pumps, and other tank fixtures. Remove the drop tube, except when it is planned to vapor-free the tank by using an educator. Cap or remove all non-product lines, such as vapor recovery lines, except the vent line. The vent line must remain connected until the tank is purged. Temporarily plug all other tank openings so that all vapors will exit through the vent line during the vapor-freeing process.

(2) Purging

- (a) Remove flammable vapors by one of the methods described in (2)(b) through (2)(e), or as required by local codes. These methods provide a means for temporary vapor-freeing of the tank atmosphere. However, it is important to recognize that the tank may continue to be a source of flammable vapors even after following the vapor-freeing procedures described in (b) through (e). For this reason, caution must always be exercised when handling or working around tanks that have stored flammable or combustible liquids. Before initiating work in the tank area or on the tank, a combustible gas indicator must be used to assess vapor concentrations in the tank and work area. All work must be done in accordance with Section 3, "Testing".
- (b) Vent all vapors from the tank at a minimum height of 12 feet above grade and 3 feet above any adjacent roof lines until the tank is purged of flammable vapors. The work area must be free from sources of ignition.
- (c) Flammable and combustible vapors may be purged with an inert gas such as carbon dioxide (CO<sub>2</sub>) or nitrogen (N<sub>2</sub>). This method is not to be utilized if the tank is to be entered for any reason, as the tank atmosphere will be oxygen deficient. The inert gas is to be introduced through a single tank opening at a point near the bottom of the tank at the end of the tank opposite the vent. When inert gases are used, they must be introduced under low pressure to avoid the generation of static electricity. When using CO<sub>2</sub> or N<sub>2</sub>, pressures in the tank must not exceed 5 pounds per square inch gauge.

CAUTION: The process of introducing compressed gases into the tank may create a potential ignition hazard as the result of the development of static electrical charges. The discharging device must therefore be grounded. Explosions have resulted from the discharging of CO<sub>2</sub> fire

(Rule 1200-1-15-Appendix 6, continued)

extinguishers into tanks containing a flammable vapor-air mixture. CO2 extinguishers must not be used for inerting flammable atmospheres.

- (d) If the method described in 3 is not practical, the vapors in the tank may be displaced by adding solid carbon dioxide (dry ice) to the tank in the amount of at least 1.5 pounds per 100 gallons of tank capacity. The dry ice should be crushed and distributed evenly over the greatest possible area in the tank to promote rapid evaporation. As the dry ice vaporizes, flammable vapors will flow out of the tank and may surround the area. Therefore, where practical, plug all tank openings except the vent after introducing the solid CO2 and continue to observe all normal safety precautions regarding flammable or combustible vapors. Make sure that all of the dry ice has evaporated before proceeding.
  - (e) Flammable vapors may be exhausted from the tank by one of two methods of tank ventilation listed below:
    - 1. Ventilation using an educator-type air mover usually driven by compressed air. The educator-type air mover must be properly bonded to prevent the generation and discharge of static electricity. When using this method, the fill (drop) tube must remain in place to ensure ventilation at the bottom of the tank. Tanks equipped with fill (drop) tubes that are not removable should be purged by this method. An educator extension shall be used to discharge vapors a minimum of 12 feet above grade and at least 3 feet above any adjacent roof line.
    - 2. Ventilation with a diffused air blower. When using this purging method, it is imperative that the air-diffusing pipe is properly bonded to prevent the discharge of a spark. Fill (drop) tubes must be removed to allow proper diffusion of the air in the tank. Air supply should be from a compressor that has been checked to ensure a clean air supply and is free from volatile vapors. Air pressure in the tank must not exceed 5 pounds per square inch gauge.
- (3) Testing.
- (a) The tank atmosphere and the excavation area are to be regularly tested for flammable or combustible vapor concentrations until the tank is removed from both the excavation and the site. Such tests are to be made with a combustible gas indicator which is properly calibrated according to the manufacturer's instructions and which is thoroughly checked and maintained in accordance with the manufacturer's instructions. Persons responsible for testing must be completely familiar with the use of the instrument and the interpretation of the instrument's readings.
  - (b) The tank vapor space is to be tested by placing the combustible gas indicator probe into the fill opening with the drop tube removed. Readings should be taken at the bottom, middle, and upper portions of the tank, and the instrument should be cleared after each reading. If the tank is equipped with a non-removable fill tube, readings are to be taken through another opening. Liquid product must not enter the probe. Readings of 20 percent or less of the lower flammable limit must be obtained before the tank is considered safe for removal from the ground.
  - (c) Tanks purged with an inert gas must be sampled with an oxygen indicator and the oxygen content must be considered while interpreting combustible gas indicator results.
- (4) Removal.
- (a) After the tank has been freed of vapors and before it is removed from the excavation, plug or cap all accessible holes. One plug must have a 1/8-inch vent hole to prevent the tank from being

(Rule 1200-1-15-Appendix 6, continued)

subjected to excessive differential pressure caused by temperature changes. The tank must always be positioned with this vent plug on top of the tank during subsequent transport and storage.

- (b) Excavate around the tank to uncover it for removal. Remove the tank from the excavation and place it on a level surface. Use wood blocks to prevent movement of the tank after removal and prior to loading on a truck for transportation. Use screwed (boiler) plugs to plug any corrosion holes in the tank shell
- (c) Precautions must be taken to assure any vapors left in the tank do not reach a combustible level. If this situation occurs, the tank must be purged according to Section B.
- (d) Before the tank is removed from the site, the tank atmosphere must be checked with a combustible gas indicator to ensure that it does not exceed 20 percent of the lower flammable limit.
- (e) The tank must be secured on a truck for transportation to the storage or disposal site with the 1/8-inch vent hole located at the uppermost point on the tank. Tanks must be transported in accordance with all applicable local, state, and federal laws and regulations.
- (f) Tanks must be labeled after removal from the ground but prior to removal from the site. Regardless of the condition of the tank, the label must contain a warning against certain types of reuse. The former contents and present vapor state of each tank, including vapor-freeing treatment and data must also be indicated. The label must be similar to the following in legible letters at least 2 inches high:

TANK HAS CONTAINED LEADED GASOLINE\*

NOT VAPOR FREE

NOT SUITABLE FOR STORAGE OF FOOD OR LIQUIDS  
INTENDED FOR HUMAN OR ANIMAL CONSUMPTION  
DATE OF REMOVAL: MONTH/DAY/YEAR

\*Or other flammable/combustible liquid. Use the applicable designation, for example, DIESEL.

Tanks that have held leaded motor fuels (or whose service history is unknown) must also be clearly labeled with the following information.

TANK HAS CONTAINED LEADED GASOLINE  
LEAD VAPORS MAY BE RELEASED IF HEAT  
IS APPLIED TO THE TANK SHELL

#### STORAGE OF USED TANKS

##### Storage Procedures

- (a) Tanks must be vapor-freed before being placed in storage. Tanks must also be free of all liquids and residues. All tank openings must be tightly plugged or capped, with one plug having a 1/8-inch vent hole to prevent the tank from being subjected to excessive differential pressure caused by temperature changes. Tanks must be stored with the vented plug at the highest point on the tank. All tanks must be labeled.
- (b) Used tanks must be stored in secure areas where the general public will not have access.

**1200-1-15-.08 FINANCIAL RESPONSIBILITY****(1) Applicability.**

- (a) This rule applies to owners and operators of all petroleum underground storage tank (UST) systems except as otherwise provided in this paragraph.
- (b) Owners and operators of petroleum UST systems are subject to these requirements if they are in operation on or after the date for compliance established in Rule 1200-1-15-.08(2).
- (c) State and federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are deemed to meet financial responsibility requirements without having to meet requirements of this rule.
- (d) The requirements of this rule do not apply to owners and operators of any UST system described in Rule 1200-1-15-.01(1)(b).
- (e) If the owner and operator of a petroleum underground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance. Regardless of which party complies, the date set for compliance at a particular facility is determined by the characteristics of the owner as set forth in rule 1200-1-15-.08(2).

**(2) Compliance Dates.**

Owners of petroleum underground storage tanks are required to comply with the requirements of this rule by the following dates:

- (a) All petroleum marketing firms owning 1,000 or more USTs and all other UST owners that report a tangible net worth of \$20 million or more to the U.S. Securities and Exchange Commission (SEC), Dunn and Bradstreet, the Energy Information Administration, or the Rural Electrification Administration; January 24, 1989.
- (b) All petroleum marketing firms owning 100-999 USTs; October 26, 1989.
- (c) All petroleum marketing firms owning 13-99 USTs at more than one facility; April 26, 1991.
- (d) All petroleum UST owners not described in subparagraphs (a), (b), or (c) of this paragraph, including all local government entities; December 31, 1993.

**(3) Definition of Terms.**

When used in this rule, the following terms shall have the meanings given below:

- (a) “Accidental release” means any sudden or nonsudden release of petroleum from an underground storage tank that results in a need for corrective action and/or compensation for bodily injury or property damage neither expected nor intended by the tank owner or operator.
- (b) “Board” means Tennessee Petroleum Underground Storage Tank Board established under T.C.A. §68-215-101 et seq.
- (c) “Bodily injury” means those bodily injuries caused by a release of petroleum from an UST system for which Tennessee law allows recovery.

(Rule 1200-1-15-.08, continued)

- (d) “Caused” in the context of third party claims means that degree of causation required by Tennessee law to allow recovery for damages caused by a release of petroleum from an UST system.
- (e) “Commissioner” means Commissioner of Environment and Conservation, his authorized representatives, or in the event of his absence or a vacancy in the Commissioner’s Office, the Deputy Commissioner.
- (f) “Controlling interest” means direct ownership of at least 50 percent of the voting stock of another entity.
- (g) “Damages” in the context of third party claims means the value or cost of bodily injury or property damage caused by the release of petroleum from an UST system as determined by using methods allowed under Tennessee law.
- (h) “Department” means the Department of Environment and Conservation.
- (i) “Financial reporting year” means the latest consecutive twelve-month period for which any of the following reports used to support a financial test is prepared: (1) a 10-K report submitted to the SEC; (2) an annual report of tangible net worth submitted to Dunn and Bradstreet; or (3) annual reports submitted to the Energy Information Administration or the Rural Electrification Administration. “Financial reporting year” may thus comprise a fiscal or a calendar year period.
- (j) “Fund” means petroleum underground storage tank fund established under T.C.A. §68-215-101 et seq. unless the context clearly indicates otherwise.
- (k) “Legal defense cost” is any expense that an owner or operator or provider of financial assurance incurs in defending against claims or actions brought (1) by EPA or the Commissioner to require corrective action or to recover the costs of corrective action; (2) by or on behalf of a third party for bodily injury or property damage caused by an accidental release; or (3) by any person to enforce the terms of a financial assurance mechanism.
- (l) “Occurrence” means the discovery of environmental contamination at a specific time and date, due to the release of petroleum from petroleum underground storage tanks.
- (m) “Owner or operator,” when the owner or operator are separate parties, refers to the party that is obtaining or has obtained financial assurances.
- (n) “Petroleum marketing facilities” include all facilities at which petroleum is produced or refined and all facilities from which petroleum is sold or transferred to other petroleum marketers or to the public.
- (o) “Petroleum marketing firms” are all firms owning petroleum marketing facilities. Firms owning other types of facilities with USTs as well as petroleum marketing facilities are considered to be petroleum marketing firms.
- (p) “Property damage” means those type damages to property caused by the release of petroleum from an UST system for which Tennessee law allows recovery.
- (q) “Provider of financial assurance” means an entity that provides financial assurance to an owner or operator of an underground storage tank through one of the mechanisms listed in rule 1200-1-15-.08(6) through rule 1200-1-15-.08(13), including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or the state of Tennessee.

(Rule 1200-1-15-.08, continued)

- (r) “Substantial business relationship” means the extent of a business relationship necessary, under applicable Tennessee law, to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the owner or operator.
  - (s) “Tangible net worth” means the tangible assets that remain after deducting liabilities; such assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, “assets” means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.
  - (t) “Termination” under 1200-1-15-.08(8)1. and 1200-1-15-.08(8)2. means only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date than the retroactive date of the original policy.
- (4) Amount and Scope of Required Financial Responsibility.
- (a) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks in at least the following per-occurrence amounts:
    - 1. For owners or operators of petroleum underground storage tanks that are located at petroleum marketing facilities, or that handle an average of more than 10,000 gallons of petroleum per month based on annual throughput for the previous calendar year; \$1 million.
    - 2. For all other owners or operators of petroleum underground storage tanks; \$500,000.
    - 3. For owners or operators who have paid all annual fees and have met all obligations to participate in the fund, the fund shall be responsible for the following:
      - (i) For owners or operators of 1 to 12 petroleum underground storage tanks, corrective action costs above ten thousand dollars (\$10,000) in an amount not to exceed one million dollars (\$1,000,000) per site per occurrence and court awards involving third party liability claims above ten thousand dollars (\$10,000) in an amount not to exceed one million dollars (\$1,000,000);
      - (ii) For owners or operators of 13 to 999 petroleum underground storage tanks, corrective action above twenty thousand dollars (\$20,000) in an amount not to exceed one million (\$1,000,000) per site per occurrence, and court awards involving third party liability claims above an amount not less than twenty-five thousand dollars (\$25,000) nor more than fifty thousand dollars (\$50,000), and not to exceed one million dollars (\$1,000,000). The amount between twenty-five thousand dollars (\$25,000) and fifty thousand dollars (\$50,000) will be set annually by the Board. Effective May 1, 1990 the amount is thirty seven thousand five hundred dollars (\$37,500) for third party claims;
      - (iii) For owners or operators of 1,000 or more petroleum underground storage tanks, corrective action costs above fifty thousand dollars (\$50,000) in an amount not to exceed one million dollars (\$1,000,000) per site per occurrence, and court awards involving third party liability claims above an amount not less than one hundred fifty thousand dollars (\$150,000) nor more than three hundred thousand dollars



(Rule 1200-1-15-.08, continued)

(\$300,000), and not to exceed one million dollars (\$1,000,000). The amount between one hundred fifty thousand dollars (\$150,000) and three hundred thousand dollars (\$300,000) will be set annually by the Board. Effective May 1, 1990, the amount is two hundred twenty-five thousand dollars (\$225,000) for third party claims;

This part is subject to Rule 1200-1-15-.08(20)(d), and Rule 1200-1-15-.09. The owners or operators eligible for fund benefit shall have a per occurrence financial assurance of either twenty thousand dollars (\$20,000) for 1 to 12 petroleum underground storage tanks, fifty-seven thousand five hundred dollars (\$57,500) for 13 to 999 petroleum underground storage tanks or two hundred seventy-five thousand dollars (\$275,000) for 1,000 or more petroleum underground storage tanks. In the event the fund has insufficient resources to meet corrective action and/or third party compensation costs, the responsibility for paying for corrective action and/or third party compensation costs shall be the responsibility of the owner, operator, or other responsible party.

- (b) Owners or operators of petroleum underground storage tanks shall demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases, arising from the operation of petroleum underground storage tanks in at least the following annual aggregate amounts:
  - 1. To assure that owners or operators can meet financial requirements for entry to the fund for both corrective action and third party liability, owners or operators eligible for the fund shall have annual aggregate amounts at least as large as the amount in the Annual Aggregate Amount column of Table 1 which corresponds to the number of tanks owned.

Table 1

## Number of Tanks Owned vs. Financial Responsibility Requirements

Number of Tanks Owned	Corrective Action Per Occurrence Amount	Third Party Compensation Per Occurrence Amount	Total Per Occurrence Amount	Annual Aggregate Amount*
1-12	\$10,000	\$10,000	\$ 20,000	\$ 20,000
13-999	\$20,000	\$ 37,500	\$ 57,500	\$ 77,500
1000 +	\$50,000	\$225,000	\$275,000	\$375,000

\*The Annual Aggregate Amount for owners of 13 to 999 tanks is determined by multiplying the Corrective Action Per Occurrence Amount by 2, then adding the Third Party Compensation Per Occurrence Amount. The Annual Aggregate Amount for owners of 1,000 or more tanks is determined by multiplying the Corrective Action Per Occurrence Amount by 3, then adding the Third Party Compensation Per Occurrence Amount.

- (c) For the purposes of subparagraphs (b) and (f) only, "a petroleum underground storage tank" means a single containment unit and does not mean combinations of single containment units.
- (d) Except as provided in subparagraph (e), if the owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for:
  - 1. taking corrective action; or

(Rule 1200-1-15-.08, continued)

2. compensating third parties for bodily injury and property damage caused by accidental releases;

The amount of assurance provided by each mechanism or combination of mechanisms shall be in the full amount specified in subparagraphs (a) and (b) of this paragraph.

- (e) If an owner or operator uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different petroleum underground storage tanks, the annual aggregate required shall be based on the number of tanks covered by each such separate mechanism or combination of mechanisms.
  - (f) Owners or operators shall review the amount of aggregate assurance provided whenever additional petroleum underground storage tanks are acquired or installed. If the number of petroleum underground storage tanks for which assurance shall be provided exceeds 12, the owner or operator shall demonstrate financial responsibility in the amount defined in subparagraph (b) by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If assurance is being demonstrated by a combination of mechanisms, the owner or operator shall demonstrate financial responsibility in the amount defined in subparagraph (b) by the first-occurring effective date anniversary of any one of the mechanisms combined (other than a financial test or guarantee) to provide assurance.
  - (g) The amounts of assurance required under this paragraph exclude legal defense costs.
  - (h) The required per-occurrence and annual aggregate coverage amounts do not in any way limit the liability of the owner or operator.
- (5) Allowable Mechanisms and Combinations of Mechanisms.
- (a) An owner or operator may use the fund to assist with the financial responsibility requirements of rule 1200-1-15-.08(4) for underground storage tanks located in the State of Tennessee after the owner or operator meets fund eligibility requirements described in rule 1200-1-15-.09(4) and (5). The fund will be implemented as described, in rule 1200-1-15-.09. When eligible, monies will be available from the fund to cover costs up to the limits specified in T.C.A. §68-215-111 subject to rule 1200-1-15-.08(11)(d).
  - (b) An owner or operator may use the financial test of self-insurance or one of the other forms of financial assurance allowed by the U.S. Environmental Protection Agency for underground storage tank owners and operators provided the owner or operator obtains the approval of the Division for the alternate form of financial responsibility.
  - (c) An owner or operator may use a combination of mechanisms as set forth in subparagraph (a) and (b) of this part to demonstrate financial responsibility under this rule for one or more underground storage tanks provided the owner or operator obtains approval of the Division.
- (6) Financial Test of Self-Insurance.
- (a) An owner or operator may satisfy the requirements of Rule 1200-1-15-.08(4) by passing a financial test as specified in this paragraph. To pass the financial test of self-insurance, the owner or operator shall meet the criteria of subparagraph (b) or (c) of this paragraph based on year-end financial statements for the latest completed fiscal year or financial reporting year. If an owner or operator has in effect more than one financial test for self-insurance at any one time to assure financial responsibility, the owner or operator shall have a tangible net worth and/or a net working capital of at least (X) times the sum of the total amounts for which this financial test is

(Rule 1200-1-15-.08, continued)

used, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used. Table 2 shall be used in both subparagraphs (b) and (c) in determining the tangible net worth and/or net working capital which an owner or operator shall demonstrate in order to self-insure for corrective action and/or third party liability based on the number of tanks for which this financial test is used.

Table 2

Number of Tanks Owned	Corrective Action Per Occurrence Amount	Third Party Compensation Per Occurrence Amount	Total Per Occurrence Amount	Annual Aggregate Amount	Self Insurance Amount
1-12*	\$10,000	\$10,000	\$20,000	\$20,000	\$20,000*
1-12	\$10,000	\$10,000	\$20,000	\$20,000	\$30,000
13-999	\$20,000	\$37,500	\$57,500	\$77,500	\$117,500
1000+	\$50,000	\$225,000	\$275,000	\$375,000	\$525,000

\* This applies when either all tanks and associated piping are new, upgraded, a combination of new and upgraded, or are located at only one facility.

- (b) If the owner or operator desires to self-insure and does not choose to meet the requirements of (6)(c), the owner or operator shall meet the requirements of this subparagraph.
  1. The owner or operator shall have a tangible net worth of at least (X) times the sum of (i), (ii) and (iii). (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.
    - (i) The owner or operator may self-insure for all or part of the Annual Aggregate Amount specified in rule 1200-1-15-.08(4)(b) based on the number of underground storage tanks for which this financial test is used to demonstrate financial responsibility;
    - (ii) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and amount of liability coverage for which a financial test is used to demonstrate financial responsibility to EPA under 40 CFR Parts 264.101, 264.143, 264.145, 265.143, 265.145, 264.147, and 265.147 or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 271; and
    - (iii) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to EPA, under 40 CFR Part 144.63, or to a state implementing agency under a state program authorized by EPA under 40 CFR Part 145.
  2. The owner or operator shall have a letter signed by the chief financial officer worded as specified in subparagraph (d).
  3. The owner or operator shall either:

(Rule 1200-1-15-.08, continued)

- (i) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Electrification Administration; or
    - (ii) Report annually the firm's tangible net worth to Dunn and Bradstreet, and Dunn and Bradstreet shall have assigned the firm a financial strength rating of 4A or 5A.
  - 4. The firm's year-end financial statements, if independently audited, cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- (c) If the owner or operator desires to self-insure and does not choose to meet the requirements of 6(b), the owner or operator shall meet the requirements of this subparagraph.
  - 1. The owner or operator shall meet the financial test requirements of subpart (i) or (ii) of this part.
    - (i) The owner or operator shall have:
      - (I) Net Working capital and tangible net worth each at least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used; and
      - (II) Tangible net worth at least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used; and
        - I. At least 90 percent of his total assets; or
        - II. At least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used;
    - (ii) The owner or operator shall have:
      - (I) A current rating for his most recent bond issuance of AAA, AA, A or BBB as issued by Standard and Poor's or Aaa, Aa, A, or Baa as issued by Moody's; and
      - (II) Tangible net worth at least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used; and
      - (III) Assets in the United States amounting to either:
        - I. At least 90 percent of his total assets; or
        - II. At least (X) times the amount of liability coverage to be demonstrated by this test, where (X) equals the Self-Insurance

(Rule 1200-1-15-.08, continued)

Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.

2. The fiscal year-end financial statements of the owner or operator shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
  3. The firm's year-end financial statements cannot include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
  4. The owner or operator shall have a letter signed by the chief financial officer, worded as specified in subparagraph (d).
  5. If the financial statements of the owner or operator are not submitted annually to the U.S. Securities and Exchange Commission, the Energy Information Administration or the Rural Electrification Administration, the owner or operator shall obtain a special report by an independent certified public accountant stating that:
    - (i) He has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or operator with the amounts in such financial statements; and
    - (ii) In connection with that comparison, no matters came to his attention which caused him to believe that the specified data should be adjusted.
- (d) To demonstrate that it meets the financial test under subparagraph (b) or (c), the chief financial officer of the owner or operator shall sign, within 120 days of the close of each financial reporting year, as defined by the twelve (12) month period for which financial statements used to support the financial test are prepared, a letter worded exactly as follows, except that the instructions in brackets are to be replaced by the relevant information and the brackets deleted:

Letter from Chief Financial Officer

I am the chief financial officer of [insert: name and address of the owner or operator]. This letter is in support of the use of the financial test of self-insurance to demonstrate financial responsibility for [insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage"] caused by accidental releases in the amount of at least [insert: dollar amount] per occurrence and [insert: dollar amount] Annual Aggregate Amount arising from operating (an) underground storage tank(s).

Underground storage tanks at the following facilities are assured by this financial test or a financial test under an authorized state program by this [insert: "owner or operator"]: [List for each facility: the name and address of the facility where tanks assured by this financial test are located, the number of tanks at each facility, and the facility identification number(s). If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to rule 1200-1-15-.02(3).]

A financial test is also used by this [insert: "owner" or "operator"] to demonstrate evidence of financial responsibility for hazardous waste treatment, storage, or disposal facilities, pursuant to interim status regulations or a permit, or for underground injection wells in the

(Rule 1200-1-15-.08, continued)

following amounts under EPA regulations or state programs authorized by EPA under 40 CFR Parts 271 and 145:

<u>Financial requirement:</u>	<u>Amount</u>
Closure	\$ _____
Post-Closure Care	\$ _____
Liability Coverage	\$ _____
Corrective Action	\$ _____
Plugging and Abandonment	\$ _____
Total	\$ _____

This [insert: "owner" or "operator"] has not received an adverse opinion, a disclaimer of opinion, or a "going concern" qualification from an independent auditor on his financial statements for the latest completed fiscal year or financial reporting year.

[Fill in the information for Alternative I if the criteria of subparagraph (b) of rule 1200-1-15-.08(6) are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of subparagraph (c) of rule 1200-1-15-.08(6) are being used to demonstrate compliance with the financial test requirements.]

## ALTERNATIVE I

- (1) Amount of annual UST aggregate coverage being assured a financial test,.....\$ \_\_\_\_\_
- (2) Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test.....\$ \_\_\_\_\_
- (3) Sum of lines 1 and 2.....\$ \_\_\_\_\_
- (4) Total tangible assets.....\$ \_\_\_\_\_
- (5) Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6]. ....\$ \_\_\_\_\_
- (6) Tangible net worth [subtract line 5 from line 4].....\$ \_\_\_\_\_
- (7) Is line 6 at least (X) times line 3?.....Yes \_\_\_\_ No \_\_\_\_  
(X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.
- (8) Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission?.....\$ \_\_\_\_\_
- (9) Have financial statements for the latest fiscal year been filed with the Energy Information Administration?.....\$ \_\_\_\_\_
- (10) Have financial statements for the latest fiscal year been filed with the Rural Electrification Administration?..  
.....\$ \_\_\_\_\_

(Rule 1200-1-15-.08, continued)

- (11) Has financial information been provided to Dunn and Bradstreet, and has Dunn and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.].....\$ \_\_\_\_\_

## ALTERNATIVE II

- (1) Amount of annual UST aggregate coverage being assured by a financial test.....\$ \_\_\_\_\_
- (2) Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test.....\$ \_\_\_\_\_
- (3) Sum of lines 1 and 2.....\$ \_\_\_\_\_
- (4) Total tangible assets.....\$ \_\_\_\_\_
- (5) Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6].....\$ \_\_\_\_\_
- (6) Tangible net worth [subtract line 5 from line 4].....\$ \_\_\_\_\_
- (7) Total assets in the U.S. [required only if less than 90 percent of assets are located in the U.S.].....\$ \_\_\_\_\_
- (8) Is line 6 at least (X) times line 3?.....Yes\_\_\_No\_\_\_

(X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.

- (9) Are at least 90 percent of assets located in the U.S.? [If "No," complete line 10.].....\$ \_\_\_\_\_
- (10) Is line 7 at least (X) times line 3?.....\$ \_\_\_\_\_

(X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.

[Fill in either lines 11-14 or lines 15-17:]

- (11) Current assets.....\$ \_\_\_\_\_
- (12) Current liabilities.....\$ \_\_\_\_\_
- (13) Net working capital [subtract line 12 from line 11].....\$ \_\_\_\_\_
- (14) Is line 13 at least (X) times line 3? .....Yes\_\_\_No\_\_\_

(X) equals the Self-Insurance Amount from Table 2 divided by the Annual Aggregate Amount from Table 2 based on the number of tanks for which this financial test is used.

- (15) Current bond rating of most recent bond issue.....\$ \_\_\_\_\_
- (16) Name of rating service.....\$ \_\_\_\_\_

(Rule 1200-1-15-.08, continued)

(17) Date of maturity of bond..... \$ \_\_\_\_\_

(18) Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Electrification Administration? \_\_\_\_\_

[If "No", please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II, complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in rule 1200-1-15-.08(6)(d) as such regulations were constituted on the date shown immediately below.

\_\_\_\_\_  
[Signature]\_\_\_\_\_  
[Name]\_\_\_\_\_  
[Title]\_\_\_\_\_  
[Date]

- (e) If an owner or operator using the financial test of self-insurance to provide financial assurance finds that he or she no longer meets the requirements of the financial test based on the year-end financial statements, the owner or operator shall obtain alternative coverage within 150 days of the end of the year for which financial statements have been prepared.
  - (f) The Commissioner may require reports of financial condition at any time from the owner or operator. If the Commissioner finds, on the basis of such reports or other information, that the owner or operator no longer meets the financial test requirements of rule 1200-1-15-.08(6)(b) or (c) and (d), the owner or operator shall obtain alternate coverage within 30 days after notification of such a finding.
  - (g) If the owner or operator fails to obtain alternate assurance within 150 days of finding that he or she no longer meets the requirements of the financial test based on the year-end financial statements, or within 30 days of notification by the Commissioner that he or she no longer meets the requirements of the financial test, the owner or operator shall notify the Commissioner of such failure within 10 days.
- (7) Substitution of Financial Assurance Mechanisms by Owner or Operator.
- (a) An owner or operator may substitute any alternate financial assurance mechanisms as specified in this rule, provided that at all times he maintains an effective financial assurance mechanism or combination of mechanisms that satisfies the requirements of rule 1200-1-15-.08(4).
  - (b) After obtaining alternate financial assurance as specified in this rule, an owner or operator may cancel financial assurance mechanism by providing notice to the provider of financial assurance.
- (8) Reporting by Owner or Operator.
- (a) An owner or operator shall submit the appropriate forms listed in rule 1200-1-15-.08(9)(b) documenting current evidence of financial responsibility to the Commissioner:
    - 1. Within thirty (30) days after the owner or operator identifies a release from an underground storage tank required to be reported under rule 1200-1-15-.05(4) or rule 1200-1-15-.06(2);
    - 2. If the owner or operator fails to obtain alternate coverage as required by this rule, within (30) days after the owner or operator receives notice of:



(Rule 1200-1-15-.08, continued)

- (i) Commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming a provider of financial assurance as a debtor,
    - (ii) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism,
    - (iii) Other incapacity of a provider of financial assurance; or
  - 3. As required by rule 1200-1-15-.08(6)(g).
  - (b) An owner or operator shall certify compliance with the financial responsibility requirements of this Chapter as specified in the new tank notification form when notifying the Department of the installation of a new underground storage tank under rule 1200-1-15-.02(3).
  - (c) The Commissioner may require an owner or operator to submit evidence of financial assurance as described in rule 1200-1-15-.08(9)(b) or other information relevant to compliance with this rule at any time.
- (9) Record keeping.
- (a) Owners or operators shall maintain evidence of all financial assurance mechanisms used to demonstrate financial responsibility under this rule for an underground storage tank until released from the requirements of this rule under rule 1200-1-15-.08(10). An owner or operator shall maintain such evidence at the underground storage tank site or the owner's or operator's place of business. Records maintained off-site shall be made available upon request of the Department.
  - (b) An owner or operator shall maintain the following types of evidence of financial responsibility:
    - 1. An owner or operator using the fund to comply with financial responsibility requirements shall maintain on file a copy of evidence of coverage required under rule 1200-1-15-.09(4) and a copy of the current petroleum underground storage tank certificate pursuant to rule 1200-1-15-.10.
    - 2. An owner or operator with an approved alternate mechanism of financial responsibility shall maintain documentation to verify such mechanism in a format as directed by the Division.
- (10) Release from the Requirements.
- An owner or operator is no longer required to maintain financial responsibility under this rule for an underground storage tank after the tank has been properly closed or, if corrective action is required, after corrective action has been completed and the tank has been properly closed as required by rule 1200-1-15-.07.
- (11) Bankruptcy or Other Incapacity of Owner or Operator or Provider of Approved Alternate Financial Assurance.
- (a) Within 10 days after commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code, naming an owner or operator as debtor, the owner or operator shall notify the Commissioner by certified mail of such commencement and submit the appropriate forms listed in rule 1200-1-15-.08(9) documenting current financial responsibility.

(Rule 1200-1-15-.08, continued)

- (b) An owner or operator who obtains financial assurance by a mechanism other than the financial test of self-insurance will be deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, letter of credit, or state-required mechanism. The owner or operator shall obtain alternate financial assurance as specified in this rule within 30 days after receiving notice of such an event. If the owner or operator does not obtain alternate coverage within 30 days after such notification, he shall notify the Commissioner.
- (c) Within thirty (30) days after receipt of notification that the Tennessee Petroleum Underground Storage Tank Fund has become incapable of paying for assured corrective action or third-party compensation costs, the owner or operator shall obtain alternate financial assurance.

**Authority:** T.C.A. §§68-215-107 and 4-5-201 et seq. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed July 3, 1991; effective August 17, 1991. Amendment filed July 28, 1995; effective October 10, 1995. Amendment filed February 4, 1998; effective April 20, 1998.

**1200-1-15-.09 ADMINISTRATIVE GUIDELINES AND PROCEDURES FOR THE TENNESSEE PETROLEUM UNDERGROUND STORAGE TANK FUND.**

(1) Purpose.

This chapter is promulgated to establish administrative guidelines and procedures to determine the manner in which disbursements are made from the Tennessee Petroleum Underground Storage Tank Fund and to implement the purposes and objectives of the Tennessee Petroleum Underground Storage Tank Act of 1988.

(2) Definitions.

The following words and terms, when used in this rule, shall have the following meanings unless the context clearly indicates otherwise.

- (a) “Board” means the petroleum underground storage tank board established in T.C.A. §68-215-112.
- (b) “Bodily injury” means those bodily injuries caused by a release of petroleum from an UST system for which Tennessee law allows recovery.
- (c) “Caused” in the context of third party claims means that degree of causation required by Tennessee law to allow recovery for damages caused by a release of petroleum from an UST system.
- (d) “Commissioner” means the Commissioner of Environment and Conservation, his authorized representatives, or in the event of his absence or a vacancy in the Commissioner’s office, the Deputy Commissioner.
- (e) “Connected piping” means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which petroleum flows. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.
- (f) “Consumption”, with respect to heating oil, means consumed on the premises where stored.

(Rule 1200-1-15-.09, continued)

- (g) "Corrective Action" means any activity, including but not limited to evaluation, planning, design, engineering, construction, and ancillary service, which is carried out in response to any discharge, release, or threatened release of petroleum.
- (h) "Corrective Action Contractor" means a person who is carrying out any corrective action, including a person retained or hired by such person to provide services relating to a corrective action.
- (i) "Damages" in the context of third party claims means the value or cost of bodily injury or property damage caused by the release of petroleum from an UST system as determined by using methods allowed under Tennessee law.
- (j) "Date of release" means the earliest date that proof of a release exists. This will be the date a release is reported to or discovered by the Department unless an earlier date is determined during the investigation of the release.
- (k) "De Minimis" means very low concentrations of petroleum.
- (l) "Department" means the Tennessee Department of Environment and Conservation.
- (m) "Director" means the Director of the Division.
- (n) "Division" means the Division designated by the Commissioner of the Department of Environment and Conservation as the agency to implement the Underground Storage Tank Program in Tennessee.
- (o) "Eligible owner" means an owner or operator that is in "Substantial Compliance" as defined in subparagraph (nn) of this paragraph.
- (p) "Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank shall be located on the farm property. "Farm" includes fish hatcheries, range land and nurseries with growing operations.
- (q) "Flow-through process tank" means a tank whose principal use is not for storage but is used in the manufacture of a product or in a treatment process. A flow-through process tank forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.
- (r) "Free product" refers to a petroleum that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).
- (s) "Fund" means the petroleum underground storage tank fund established under T.C.A. §68-215-110, unless the context clearly indicates otherwise.
- (t) "Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.
- (u) "Ground water" means water below the land surface in a zone of saturation.

(Rule 1200-1-15-.09, continued)

- (v) “Heating oil” means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.
- (w) “Hydraulic lift tanks” means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.
- (x) “Liquid trap” means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.
- (y) “Noncommercial purposes”, with respect to motor fuel, means not for resale.
- (z) “Occurrence” means the discovery of environmental contamination at a specific time and date, due to the release of petroleum from petroleum underground storage tanks.
- (aa) “On the premises where stored” with respect to heating oil means UST systems located on the same property where the stored heating oil is used.
- (bb) “Operator” means any person in control of, or having responsibility for, the daily operation of the petroleum underground storage tank.
- (cc) “Owner” means:
  - 1. For petroleum storage tanks in use or brought into use on or after November 8, 1984, any person who owns a petroleum underground storage tank used for the storage, use, or dispensing of petroleum.
  - 2. For petroleum underground storage tanks used prior to November 8, 1984, but no longer in use after that date, the person who last owned the petroleum underground storage tank used for storage, use, or dispensing of petroleum immediately before discontinuation of its use.
- (dd) “Person” means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, state and federal agencies, municipalities or political subdivisions, or officers thereof, departments, agencies or instrumentalities, or public or private corporations or officers thereof, organized or existing under the laws of this or any other state or country.
- (ee) “Petroleum” means crude oil or any fraction thereof that is liquid at standard temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term petroleum includes but is not limited to petroleum and petroleum based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.
- (ff) “Pipe” or “Piping” means a hollow cylinder or tubular conduit that is constructed of non-earthen materials.
- (gg) “Pipeline facilities (including gathering lines)” are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

(Rule 1200-1-15-.09, continued)

- (hh) “Property damage” means those type damages to property caused by the release of petroleum from an UST system for which Tennessee law allows recovery.
- (ii) “Reasonable cost” means that monetary amount or range, as determined by the Department, to be commensurate with a corrective action. The Department’s determination is based on an evaluation of typical costs expected for the particular corrective action under review considering the scope and complexity of the activities involved.
- (jj) “Release” means any spilling, overfilling, leaking, emitting, discharging, escaping, leaching or disposing of a petroleum substance from an UST or its associated piping into ground water, surface water or subsurface soils.
- (kk) “Residential tank” is a tank located on property used primarily for dwelling purposes.
- (ll) “Septic tank” is a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tanks are pumped out periodically and hauled to a treatment facility.
- (mm) “Storm-water or wastewater collection system” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.
- (nn) “Substantial Compliance” shall mean that an owner or operator of an underground storage tank has registered that tank with the Division, has timely paid all annual tank fees, and has complied with the requirements of rule 1200-1-15-.02(1) through rule 1200-1-15-.07(5).
- (oo) “Surface impoundment” is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.
- (pp) “Tank” is a stationary device designed to contain an accumulation of petroleum and constructed of non-earthen materials (e.g., wood, concrete, steel, fiberglass) that provides structural support.
- (qq) “Third Party Claim” means any civil action brought or asserted by third party against any owner or operator for damages resulting in bodily injury or property damages which are caused by a release of petroleum from an UST system.
- (rr) “Third Party” means any person except: the owner or operator of an UST system from which a release of petroleum occurred; the owner of the petroleum site; any person in his or her capacity as an agent, servant or employee of such owner or operator or petroleum site owner: the Department; or the Environmental Protection Agency.
- (ss) “Underground area” means an underground room, such as a basement, cellar, shaft, or vault, providing enough space for physical inspection of the exterior of the tanks situated on or above the surface of the floor.
- (tt) “Underground release” means any below ground release.
- (uu) “Underground storage tank” or “UST” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of petroleum, and

(Rule 1200-1-15-.09, continued)

the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

1. Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
  2. Tank used for storing heating oil for consumption on the premises where stored;
  3. Septic tank;
  4. Pipeline facility (including gathering lines) regulated under:
    - (i) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
    - (ii) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
    - (iii) State laws comparable to the provisions of law in Subparts (i) or (ii) above if it is an intrastate pipeline;
  5. Surface impoundment, pit, pond, or lagoon;
  6. Storm-water or wastewater collection system;
  7. Flow-through process tank;
  8. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
  9. Storage tanks situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor; and
  10. Piping connected to any of the above exclusions.
- (vv) “UST system” or “tank system” means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.
- (ww) “Wastewater treatment tank” means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.
- (xx) “Waters” means any and all water, public or private, on or beneath the surface of the ground, which are contained within, flow through or border upon Tennessee or any portion thereof except those bodies of water confined to, and retained within, the limits of private property in single ownership which do not combine or effect a junction with natural surface or underground waters. [Acts 1971, ch. 164, §3; 1977, ch. 366, §1; T.C.A. §70-326; Acts 1984, ch. 804, §1.]

(3) Applicability.

Requirements of this rule apply to all owners and operators of an underground storage tank system as defined in rule 1200-1-15-.09(2) except as otherwise provided for in rule 1200-1-15-.01(1)(b), rule 1200-1-15-.10(3)(e).

(4) Fund Eligibility Requirements.

(Rule 1200-1-15-.09, continued)

- (a) Every owner of an UST is required to register that tank with the Division in accordance with Rule 1200-1-15-.02. The owner and/or operator is required to annually pay the required fee for each tank described in Rule 1200-1-15-.10(2) and Rule 1200-1-15-.10(6)(c). Owners and/or operators satisfying the requirements of this paragraph will have established Fund eligibility. Before the owner and/or operator will receive Fund benefit, the applicable entry level amount to the Fund must be expended as approved costs by the owner and/or operator and/or financial assurance provider. The applicable entry level is the entry level in effect on the date of the release.

If the date of release was prior to July 1, 1988, the owner and/or operators are not eligible to receive Fund benefit. If the date of release was between July 1, 1988 and June 30, 1989, the per occurrence entry level for corrective action is seventy-five thousand dollars (\$75,000) and the per occurrence entry level for third party compensation is one hundred fifty thousand dollars (\$150,000). If the date of release was between July 1, 1989, and April 30, 1990, the per occurrence entry level for corrective action is fifty thousand dollars (\$50,000) and the per occurrence entry level for third party compensation is one hundred fifty thousand dollars (\$150,000).

- (b) Every owner or operator of an UST is required to maintain Fund eligibility. Requirements to maintain eligibility are as follows:
  - 1. The owner or operator shall remain in substantial compliance for each UST. If a UST does not remain in substantial compliance, the owner or operator is not eligible for Fund benefits for the site containing the non-complying UST.
  - 2. Annual payment of Underground Storage Tank Fees are required for each UST until such time as permanent closure or change-in- service requirements of rule 1200-1-15-.07(2) through rule 1200-1-15-.07(5) are satisfied.
  - 3. The owner or operator shall maintain the records as required in Chapter 1200-1-15 and submit or make them available to the Division upon request or as directed in regulation.
  - 4. All records maintained as required in subparagraph (b)3. above shall be retained by the owner and/or operator until one of the following is accomplished:
    - (i) Closure requirements of rule 1200-1-15-.07(2) through 1200-1-15-.07(5) are satisfied;
    - (ii) Ownership of an UST, and all records pertaining thereto, are transferred to a new owner; or
    - (iii) Owner or operator is instructed otherwise by the Division.

(5) Loss, Restoration, and Establishment of Fund Eligibility.

- (a) If at the time of discovery of a release, the Division determines that an owner and/or operator has failed to establish Fund eligibility in accordance with subparagraph (4)(a) or has lost Fund eligibility in accordance with subparagraph (5)(b), corrective action costs and/or third party damages associated with that release are not eligible for coverage by the Fund.
- (b) If at any time the Division determines that an owner and/or operator has failed to meet the requirements of Rule 1200-1-15-.09(4), the Division will provide notice to the owner and/or operator of such non-compliance. The owner and/or operator shall have thirty (30) days after

(Rule 1200-1-15-.09, continued)

the date of such notice sent by certified mail as evidenced by return receipt to provide evidence of compliance with all Fund Eligibility requirements or such other time as the Division may allow. If, after this time period, the owner and/or operator fails to resolve the non-compliance, the Director shall issue a Notice of Fund Ineligibility and enforcement actions which may include penalty assessment may be initiated. The owner and/or operator shall have sixty (60) days after the date of Notice of Fund Ineligibility sent by certified mail as evidenced by return receipt to place in force alternate financial assurance required in Rule 1200-1-15-.08(4) and Rule 1200-1-15-.08(15).

- (c) An owner and/or operator who has failed to establish Fund eligibility or who has been issued a Notice of Fund Ineligibility must resolve the non-compliance according to the requirements set forth in parts 1. through 7. below for Fund Eligibility to be restored.
  - 1. Owners and/or operators who have been issued Notices of Fund Ineligibility for failure to pay annual tank fees for tanks in service prior to July 1, 1994, but have paid all tank fees and penalties owed for the 1994/1995 fee year by July 1, 1995, must complete the following to have Fund eligibility restored:
    - (i) Pay all annual tank fees and late payment penalties owed;
    - (ii) Pay all civil penalties owed;
    - (iii) Perform and pass a Tank Tightness Test for each UST system in operation at the site within one (1) year of July 1, 1995. If an UST system fails the tightness test, then the owner and/or operator must demonstrate through a Division approved site check that no releases from the UST system(s) have occurred at this site; and
    - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.
  - 2. Owners and/or operators who have been issued Notices of Fund Ineligibility for failure to pay annual tank fees and the tank fees have been owed for less than one (1) year from the date of the Notice of Fund Ineligibility must complete the following to have Fund Eligibility restored:
    - (i) Pay all annual tank fees and late payment penalties owed;
    - (ii) Pay all civil penalties owed;
    - (iii) Perform and pass a Tank Tightness Test for each UST system in operation at the site. If an UST system fails the tightness test, then the owner and/or operator must demonstrate through a Division approved site check there have been no releases from the UST system(s) at the site; and
    - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.



(Rule 1200-1-15-.09, continued)

3. Owners and/or operators who have been issued Notices of Fund Ineligibility for failure to pay annual tank fees and the tank fees have been owed for one (1) year or more after the date of the Notice of Fund Ineligibility must complete the following to have Fund Eligibility restored:
  - (i) Pay all annual tank fees and late payment penalties owed;
  - (ii) Pay all civil penalties owed;
  - (iii) Demonstrate through a Division approved site check there have been no releases from the UST system(s) at this site; and
  - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.
4. Owners and/or operators who have been issued a Notice of Fund Ineligibility for failure to correct violations of the regulations and the Notice of Fund Ineligibility was issued within the last ninety (90) days must complete the following to have Fund Eligibility restored:
  - (i) Correct the violations noted in the Notice of Non-Compliance;
  - (ii) Pay all civil penalties owed;
  - (iii) Perform and pass a Tank Tightness Test for each UST system in operation at the site. If an UST system fails the tightness test, the owner and/or operator must demonstrate through a Division approved site check there have been no release(s) from the UST system(s) at the site; and
  - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.
5. Owners and/or operators who have been issued a Notice of Fund Ineligibility for failure to correct violations of the regulations and the Notice of Fund Ineligibility is more than ninety (90) days old must complete the following to have Fund Eligibility restored:
  - (i) Correct the violations noted in the Notice of Non-Compliance;
  - (ii) Pay all civil penalties owed;
  - (iii) Demonstrate through a Division approved site check there have been no releases from the UST system(s) at this site; and
  - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure,

(Rule 1200-1-15-.09, continued)

to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.

6. Owners and/or operators who have begun operation of UST sites which were issued a Notice of Fund Ineligibility due to non-compliance by previous owners and/or operators and the Notice of Fund Ineligibility was issued within the last year must complete the following to have Fund Eligibility restored:
  - (i) Pay all tank fees and late payment penalties owed by the current owner and/or operator;
  - (ii) Pay any civil penalties owed by the current owner and/or operator;
  - (iii) Perform and pass a Tank Tightness Test for each UST system in operation at the site. If an UST system fails the tightness test, the owner and/or operator must demonstrate through a Division approved site check there have been no releases from the UST system(s) at the site; and
  - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.
7. Owners and/or operators who have begun operation of UST sites which were issued a Notice of Fund Ineligibility due to non-compliance by previous owners and/or operators and the Notice of Fund Ineligibility is more than one (1) year old must complete the following to have Fund Eligibility restored:
  - (i) Pay all tank fees and late payment penalties owed by the current owner and/or operator;
  - (ii) Pay all civil penalties owed by the current owner and/or operator;
  - (iii) Demonstrate through a Division approved site check there have been no releases from the UST system(s) at the site; and
  - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection with forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator.
- (d) An owner and/or operator who has an Underground Storage Tank(s) which has never established Fund eligibility may contact the Division and pursue establishment of Fund Eligibility in accordance with the requirements set forth in parts 1. and 2. of this subparagraph.
  1. Owners and/or operators with Underground Storage Tanks that were installed before July 1, 1989 may establish Fund Eligibility by:

(Rule 1200-1-15-.09, continued)

- (i) Properly registering the underground storage tank(s);
  - (ii) Paying all fees and late payment penalties owed;
  - (iii) Paying all civil penalties owed;
  - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator; and
  - (v) Demonstrating through a Division approved site check there have been no releases from the UST system(s) at the site.
- 2. Owners and/or operators with UST systems that were installed after July 1, 1989, may establish Fund Eligibility by performing the following:
  - (i) Properly registering the underground storage tank(s);
  - (ii) Paying all fees and late payment penalties owed;
  - (iii) Paying all civil penalties owed;
  - (iv) The Division will conduct an inspection of the owner and/or operator's petroleum site and underground storage tank systems. The owner and/or operator shall cure, to the satisfaction of the Division, any noted deficiencies or violations discovered by the Division personnel during this inspection within forty-five (45) days, or such other time period as the Division may allow, of the date of the notice of such deficiencies to the owner and/or operator; and
  - (v) If the underground storage tank system(s) have a release detection system in operation as described in 1200-1-15-.04(3)(d), (e), (f), or (g) and it has been monitored properly for at least the last six (6) consecutive months, the monthly monitoring results may be submitted to document there have been no releases from the underground storage tank system(s). If no release detection system was in operation, a release detection system other than those described in 1200-1-15-.04(3)(d), (e), (f), or (g) was in operation, or the leak detection system was in place is the type described in 1200-1-15-.04(3)(d), (e), (f), or (g) but operated improperly then the owner or operator must demonstrate there have been no releases from the underground storage tank system(s) by performing a site check approved by the Division.
- (e) An owner and/or operator may petition the Board for a hearing of the Commissioner's determination provided a written petition is submitted to and received by the Commissioner within thirty (30) days of receipt of the Division's determination of Fund Ineligibility or determination that the responsible party has failed to restore Fund Eligibility, pursuant to the terms of the Act and this Rule. The Commissioner's determination shall be final and not subject to review unless the written petition for hearing is submitted and received within this time frame. The written petition must set forth the basis for the appeal as required by the Administrative Procedures Act, T.C.A. §4-5-101 et seq, and the Rules promulgated thereunder, particularly Rule 1360-4-1-.05

(Rule 1200-1-15-.09, continued)

- (f) Within thirty (30) days of meeting the requirements to either restore or establish fund eligibility in accordance with rule 1200-1-15-.09(5)(c) or (d), the Division will notify the owner and/or operator of the date that Fund eligibility was restored. The fund will not cover either investigative or corrective action costs or third party liability claims associated with a release which occurred during the time of Fund ineligibility.
- (6) Annual Fee Assessment.
  - (a) As part of the eligibility requirements to participate in the liability limitations and reimbursement benefits of the Fund, an UST owner or operator shall pay an annual Tank Fee set by the Board.
  - (b) Each year UST owners or operators will be notified by the Division of the amount of the required Tank Fee.
- (7) Authorized Disbursements From the Fund.
  - (a) Whenever, in the Commissioner's determination, an eligible owner and/or operator has a release of petroleum from an underground storage tank and the owner and/or operator has been found to be eligible for Fund coverage, the Department shall, subject to the provisions of this rule, disburse monies available in the Fund to provide for:
    - 1. Emergency response activities, investigation, and assessment of sites contaminated by a release of petroleum in accordance with the requirements of rule 1200-1-15-.05 through 1200-1-15-.06;
    - 2. The rehabilitation of sites contaminated by a release of petroleum, which may consist of clean-up of affected soil and groundwater, using cost effective alternatives that are technologically feasible and reliable, and that provide adequate protection of the public health, safety and welfare and minimize environmental damage, in accordance with corrective action requirements of rule 1200-1-15-.06;
    - 3. The interim replacement and permanent restoration of potable water supplies.
  - (b) Monies held in the Fund shall not be used to reimburse costs directly incurred by owners and/or operators conducting corrective action in accordance with Rule 1200-1-15-.06(5)(g).
  - (c) Monies held in the Fund may be disbursed for making payments to third parties who bring suit relative to an UST release against the owner or operator of an UST who is eligible for Fund coverage when such third party obtains a final judgment in that action enforceable in Tennessee.
  - (d) Costs incurred by the Division in the administration of the provisions of this Rule or authorized under T.C.A. §68-215-101 et seq. shall be charged to the Fund.
  - (e) The Fund shall be available to the Board and the Commissioner for expenditures for the purposes of providing for the investigation, identification, and for the reasonable and safe cleanup, including monitoring and maintenance of petroleum sites within the state as provided in T.C.A. §68-215-101 et seq.
  - (f) The Commissioner may enter into contracts and use the Fund for those purposes directly associated with identification, investigation, containment, and cleanup, including monitoring and maintenance prescribed above including:
    - 1. Hiring consultants and personnel;

(Rule 1200-1-15-.09, continued)

2. Purchase, lease or rental of necessary equipment; and
  3. Other necessary expenses.
- (g) The Commissioner will pay each approved claim of the Fund in chronological order based upon the date the claim is submitted for payment, except as set forth in Rule 1200-1-15-.09(10)(c).
- (h) The Commissioner will not authorize any disbursement from the Fund for costs for which the owner and/or operator receives payment from another insurance carrier or other source. Further, the Division shall acquire by subrogation the right of the owner and/or operator of the underground storage tank system from which the release occurred, responsible or liable for the release.
- (8) Scope of Fund Coverage.
- (a) The Fund will provide to eligible owners or operators coverage for the cost of investigation and corrective action resulting from the accidental release of petroleum from an UST storing petroleum; except for those costs incurred by owners or operators performing investigation and corrective action work as described in rule 1200-1-15-.06(5)(g).
- (b) Owners or operators of USTs who are eligible for Fund coverage shall meet the per site per occurrence financial responsibility requirements specified in parts 1., 2., or 3. and illustrated in Table 3.
1. If the date of release was between July 1, 1988 and June 30, 1989, the financial responsibility requirements for eligible UST owners or operators for taking corrective action will be seventy-five thousand dollars (\$75,000) and compensation of third parties will be one hundred fifty thousand dollars (\$150,000).
  2. If the date of release was between July 1, 1989 and April 30, 1990, the financial responsibility requirements for eligible UST owners or operators for taking corrective action will be fifty thousand dollars (\$50,000) and compensation of third parties will be one hundred fifty thousand dollars (\$150,000).
  3. If the date of release was between May 1, 1990 and April 4, 1995, the financial responsibility requirements for eligible UST owners or operators for corrective action and for compensation for third party claims will be as follows based on the number of tanks owned or operated:
    - (i) 1 to 12 tanks, ten thousand dollars (\$10,000) for taking corrective actions and ten thousand dollars (\$10,000) for compensation of third parties;
    - (ii) 13 to 999 tanks, twenty thousand dollars (\$20,000) for taking corrective actions and thirty-seven thousand five hundred dollars (\$37,500) for compensation of third parties; or
    - (iii) 1,000 or more tanks, fifty thousand dollars (\$50,000) for taking corrective actions and two hundred twenty-five thousand dollars (\$225,000) for compensation of third parties.
  4. If the date of release was on or after April 5, 1995, the financial responsibility requirements for corrective action costs for eligible UST owners or operators will be as follows based on the number of tank owned or operated:

(Rule 1200-1-15-.09, continued)

- (i) 1 to 12 tanks, ten percent (10%) of the total corrective action costs expended in an amount not to exceed ten thousand dollars (\$10,000);
  - (ii) 13 to 999 tanks, twenty percent (20%) of the total corrective action costs expended in an amount not to exceed twenty thousand dollars (\$20,000); or
  - (iii) 1,000 or more tanks, fifty thousand dollars (\$50,000).
5. If the date of release was on or after April 5, 1995, the financial responsibility requirements for compensation of third parties claims for eligible UST owners or operators will be as follows based on the number of tanks owned or operated:
- (i) 1 to 12 tanks, ten thousand dollars (\$10,000) for compensation of third parties;
  - (ii) 13 to 999 tanks, thirty-seven thousand five hundred dollars (\$37,500) for compensation of third parties; or
  - (iii) 1,000 or more tanks, two hundred twenty-five thousand dollars (\$225,000) for compensation of third parties.

In the future, the Board may change the owner's or operator's limit of financial responsibility for third party damages per site per occurrence within the limits specified for 13 or more tanks in T.C.A. §68-215-101 et seq., if deemed necessary.

TABLE 3  
OWNER/OPERATOR FINANCIAL RESPONSIBILITY PER SITE PER OCCURRENCE

DATE OF RELEASE	NUMBER OF TANKS		
	1 - 12 Tanks	13 - 999 Tanks	1000+ Tanks
Prior to July 1, 1988	All costs - Not Fund Eligible	All costs - Not Fund Eligible	All costs - Not Fund Eligible
Between July 1, 1988 and June 30, 1989	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party	\$75,000 Clean-up/ \$150,000 third party
Between July 1, 1989 and April 30, 1990	\$50,000 Clean-up/ \$150,000 third party	\$50,000 Clean-up/ \$150,000 third party	\$50,000 Clean-up/ \$150,000 third party
Between May 1, 1990 and April 4, 1995	\$10,000 Clean-up/ \$10,000 third party	\$20,000 Clean-up/ \$37,500 third party	\$50,000 Clean-up/ \$225,000 third party
On or After April 5, 1995	10% of Clean-up Cost not to exceed \$10,000 \$10,000 third party	20% of Clean-up cost not to exceed \$20,000 \$37,500 third party	\$50,000 Clean-up/ \$225,000 third party

- (c) The Fund shall be responsible to eligible UST owners or operators for eligible corrective action costs above the entry level to the Fund in an amount not to exceed one million dollars (\$1,000,000) per site per occurrence. Likewise, the Fund shall be responsible to eligible UST owners or operators for court awards involving third party claims above the entry level into the Fund in an amount not to exceed one million dollars (\$1,000,000) per site per occurrence.

- (9) Fund Ineligible Costs.

(Rule 1200-1-15-.09, continued)

- (a) Costs of replacement, repair, removal, maintenance, and/or retrofitting of affected tanks and associated piping and any costs not integral to site rehabilitation shall not be eligible for payment or reimbursement by the Fund. Costs of replacement, repair, removal maintenance, and/or retrofitting of tanks and associated piping to comply with the upgrade requirements of rule 1200-1-15-.02(2) shall not be eligible for Fund payment or reimbursement. Replacement of asphalt or concrete shall not be eligible for Fund payment or reimbursement.
  - (b) The cost of equipment purchases other than routinely required supplies which are expended at a given site or equipment which shall be installed at a site to implement a Corrective Action Plan shall not be charged as a lump sum to the cost of rehabilitating any given site at which funds are being claimed for containment, investigative, or corrective action costs. Examples of equipment which could not be charged to a specific site would include: drilling rigs, earth moving equipment, ground water sampling pumps, and photoionization detectors. Examples of equipment which could be charged to a specific site would include: bailers, sample containers, etc. Hourly charges for equipment may be established in the cost proposal submitted for each major phase of work. These hourly rates shall be competitive with similar charges by other approved contractors, or they may be rejected by the Division if they are determined to represent unreasonable costs.
  - (c) The owner or operator financial responsibility requirements amounts as specified in rule 1200-1-15-.09(8)(b) are not eligible for reimbursement from the Fund. Proof of payment of these initial amounts is required prior to reimbursement of any costs. The owner or operator's financial responsibility requirement for taking corrective action cannot include any cost defined as Fund Ineligible in subparagraphs (a) and (b).
  - (d) Costs associated with corrective action conducted in accordance with 1200-1-15-.06(5)(g) shall not be eligible for reimbursement from the Fund.
  - (e) Costs of removing underground storage tanks, including any expenditure associated with the proper closure of a tank in compliance with rule 1200-1-15-.07 shall not be eligible for Fund payment or reimbursement.
- (10) Fund Obligations.
- (a) Contingent upon availability of funds, the Commissioner will make obligations from the Fund when:
    - 1. A cost proposal for containment, investigative, or corrective actions, submitted in accordance with rule 1200-1-15-.09(11), is approved by the Division;
    - 2. A judgment for a third party claim is submitted for payment in accordance with rule 1200-1-15-.09(7) and rule 1200-1-15-.09(12);
    - 3. A payment application is received for containment, investigative, or corrective action work performed from July 1, 1988 until April 15, 1990, subject to a determination of reasonable costs by the Division. Fund eligibility from July 1, 1988 until April 15, 1990 shall be determined by fee payment as required by the Tennessee Petroleum Underground Storage Tank Act;
    - 4. A payment application is received for initial release response, abatement measures, and initial free product removal under the terms of rule 1200-1-15-.09(11)(c);

(Rule 1200-1-15-.09, continued)

5. A payment application is received and approved by the Division for costs associated with providing an alternate water supply to a person whose water supply has been contaminated by a release of petroleum.
  6. The Commissioner or Board determines it is necessary to provide for containment, investigation, identification, reasonable and safe cleanup, and as otherwise provided in the Tennessee Petroleum Underground Storage Tank Act.
- (b) If the unobligated balance of the Fund is less than the total amount associated with payment applications, cost proposals, and third party judgements which have been accepted by the Commissioner, to the extent allowed by available funds, funds will be obligated in the chronological order in which the claims were submitted, except for the provisions of subparagraph (c.)
  - (c) Obligations of funds required for satisfying Fund Eligible payment applications for work performed under subparagraph (a)3. above or judgements for third party claims which were rendered prior to April 15, 1990 for releases discovered from July 1, 1988, until April 15, 1990, will be given priority over payment applications and cost proposals for releases which occur after April 15, 1990.
  - (d) All claims against the Fund are clearly obligations only of the Fund and not of the State, and any amounts required to be paid under this part are subject to the availability of sufficient monies in the Fund. The full faith and credit of the State shall not in any way be pledged or considered to be available to guarantee payment from such Fund.
- (11) Requirements for Fund Coverage of Corrective Action Costs. An eligible owner or operator conducting UST corrective actions is entitled to coverage of reasonable costs from the Fund, subject to the provisions set forth in this Paragraph. The Division shall acquire by subrogation the right of the owner/operator to recover from any person responsible or liable for the release, other than the owner/operator of the underground storage tank system from which the release occurred, the amount paid by the fund to the owner/operator.
- (a) Upon confirmation of a release in accordance with rule 1200-1-15-.05(3) or after a release from the UST system is identified in any other manner, owners and operators shall perform initial response actions required in rule 1200-1-15-.06(2), initial abatement measures required in rule 1200-1-15-.06(3)(a)1 - 8. and rule 1200-1-15-.06(3)(b), and initial free product removal according to rule 1200-1-15-.06(4) and rule 1200-1-15-.06(3)(a)6 necessary to properly stabilize a site and to prevent significant continuing damage to the environment or risk to human health.
  - (b) Upon confirmation and reporting of a release in accordance with the requirement of rule 1200-1-15-.05(1) through rule 1200-1-15-.05(3), the owner or operator shall select a contractor from the Division's list of approved contractors if the owner or operator expects to apply for Fund benefits. The Division shall be notified in writing of such a selection within thirty (30) days or other time frame specified by the Division. A contractual agreement shall be established between the owner or operator and the contractor. The Division shall be provided a copy of the contractual agreement.
  - (c) Effective December 22, 1998, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-1-15-.05(1) through rule 1200-1-15-.05(3), the owner and/or operator shall submit documentation to the Division verifying that the tanks are in compliance with the upgrading and performance standards set forth in rule 1200-1-15-.02(1) and (2). On the effective date of this rule, upon confirmation and reporting of a release in accordance with the requirements of rule 1200-1-15-.05(1) through rule 1200-1-15-.05(3), the owner and/or operator shall submit documentation to the Division verifying the performance of release detection as



(Rule 1200-1-15-.09, continued)

required by rule 1200-1-15-.04 at the time of the release. The owner and/or operator shall submit this documentation to the Division within thirty (30) days of the date the release is confirmed.

- (d) If initial release responses, abatement measures, and initial free product removal, conducted in accordance with rules 1200-1-15-.06(2) through rule 1200-1-15-.06(4), are required to properly stabilize a site and prevent significant continuing damage to the environment or risk to human health, and the cost of such required measures is expected to exceed ten thousand dollars (\$10,000), then the owner or the approved corrective action contractor may contact the Division to obtain verbal or written approval to allow additional expenditures prior to the submittal of a cost proposal. Additional expenditures may be authorized by the Division up to a total of thirty thousand dollars (\$30,000) which may be reimbursable from the Fund to achieve site stabilization and immediate protection of human health or the environment. Such approval may be given following the actual expenditures if immediate actions were necessary to protect human health or the environment and Division personnel were unavailable. In such a case, the Division shall be notified of the actions taken within seventy-two hours.
- (e) Following completion of necessary site stabilization actions as described in (d) of this paragraph, subsequent investigative and corrective actions shall be performed by approved contractors and in accordance with the requirements of rule 1200-1-15-.06(2) through rule 1200-1-15-.06(7). Further, prior to initiating any of the corrective actions identified in 1. through 6. below, unless otherwise directed by the Division, the owner or operator shall, through the assistance of the selected approved contractor, prepare and submit to the Division a cost proposal for conducting the proposed corrective action. Cost proposals shall be submitted in accordance with a format which shall be established by the Division.
  - 1. Preliminary Investigation (Site Check in accordance with rule 1200-1-15-.06(3)).
  - 2. Free Product Removal (in accordance with rule 1200-1-15-.06(4)).
  - 3. Initial Site Characterization Report (in accordance with rule 1200-1-15-.06(5)).
  - 4. Environmental Assessment Report and Development of Corrective Action Plan (in accordance with rule 1200-1-15-.06(6) through rule 1200-1-15-.06(7)).
  - 5. Implementation of Corrective Action Plan. (This shall include the costs of: finalizing equipment design; purchase of equipment and materials to be dedicated to the site for corrective action; installation and bringing to operational status the corrective action system; operation and maintenance costs of corrective action system for the total projected time period in which the corrective action system will be needed to comply with corrective action limits of Chapter 1200-1-15, Appendices 3 and 4).
  - 6. Provision of permanent alternate water supply.
- (f) Upon review of a cost proposal for any of the above activities the Division may:
  - 1. Accept the cost proposal and authorize work to be initiated; or
  - 2. Request a modification to or clarification of the cost proposal if projected costs are not determined to be reasonable.
- (g) In addition to the above requirements of (d) and (e) of this paragraph, the owner or operator shall upon submittal of a cost proposal for a site investigation, also submit an estimate of the total cost of remediation for the site in a format required by the Division, which shall be used

(Rule 1200-1-15-.09, continued)

solely for the purpose of the Board and the Division in projecting future funding requirements for the Fund. The total estimated cost of remediation for a site shall be updated by the owner or operator in accordance with a schedule required by the Division and as more complete information regarding a site becomes available.

- (h) Upon acceptance of a cost proposal by the Division, sufficient monies will be obligated from the Fund for completion of the particular phase of work for which the cost proposal was submitted and authorization will be provided for the initiation of the proposed action. Obligation of funds shall be subject to the availability of funds at the time of acceptance of the cost proposal.
- (i) Corrective actions performed prior to acceptance of an associated cost proposal may not be eligible for reimbursement.
- (j) If the cost of completing any of the corrective actions of subparagraph (e)1 - 6, is expected to exceed the amount of an accepted cost proposal, an amended cost proposal shall be submitted and accepted to allow additional funds to be obligated.
- (k) Any corrective action which is carried out in response to any discharge, release, or threatened release of petroleum from an UST shall be conducted in accordance with the requirements of rules 1200-1-15-.06(1) through 1200-1-15-.06(7) and subparagraphs (a) through (e) of this paragraph.
- (l) The owner or operator or the selected corrective action contractor shall keep and preserve detailed records demonstrating compliance with approved investigative and corrective action plans and all invoices and financial records associated with costs for which reimbursement will be requested. These records shall be kept for at least three years after corrective action has been completed for a site.
- (m) The selected corrective action alternative shall be implemented in a manner acceptable to the Division in accordance with an approved plan in order for the owner or operator to be eligible for the reimbursement of costs.
- (n) An eligible owner or operator conducting UST response actions from July 1, 1988 until April 15, 1990, relative to any discharge, release or threatened release of petroleum from an UST, is entitled to reimbursement of reasonable costs above entry level from the Fund but is exempted from the requirements of subparagraphs (b) through (j) above, provided that corrective actions were carried out in accordance with a plan approved by the Division.
- (o) If corrective actions which were initiated during the time period referenced in subparagraph (n) above are still continuing on April 15, 1990, the Division may require submittal of cost proposals for any remaining phases of work and for the total projected cost of the remediation.
- (p) If the contractor performing corrective actions as described in subparagraph (o) above is not an approved contractor, the Division may authorize the continued use of that contractor.
- (q) If a contractor is performing corrective action at a site prior to development of an approved contractor list, the Division may authorize the continued use of that contractor.
- (r) The tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the Fund. Further, the tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall fully cooperate with any audit which the Commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the

(Rule 1200-1-15-.09, continued)

Department for reimbursement from the Fund. Therefore, the tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall produce any records, data, documents, information, and personnel for interviews as necessary in the Commissioner's determination to fully and completely conduct an audit.

- (12) Requirements for Fund Coverage of Third Party Claims. An eligible owner or operator is entitled to Fund coverage for third party damages caused by the release of petroleum from an underground storage tank system, subject to the revisions set forth in this Part. The Division shall acquire by subrogation the right of the owner/operator to recover the amount of damages paid to any third party from any person responsible or liable for the release, other than the owner and/or operator of the underground storage tank system from which the release occurred.

To assert a claim for payment or reimbursement of a third party claim, an eligible owner or operator shall comply with each of the following:

- (a) Notify the Division in writing within 21 days upon the receipt of written notice of the third party liability suit. Thereafter, the owner and/or operator shall submit to the Division a report which accurately reflects the status of the lawsuit every 4 months, until the litigation is resolved. The owner and/or operator shall also notify the Division in writing fourteen days in advance of any settlement conference or settlement agreement;
- (b) The owner or operator is in substantial compliance at the time the release occurred at the time the third party suit is filed, and at the time the application for reimbursement is submitted and provides documentation to the Division of substantial compliance;
- (c) Copies of the invoices for all costs for which payment is sought together with a copy of the bid proposal submitted to the owner or operator by the Corrective Action Contractor retained to perform the corrective action shall be provided to the Division with the application for reimbursement as set forth in paragraph (15) of this rule.
- (d) The third party obtains a final judgment enforceable in Tennessee or pursuant to a settlement reviewed and approved by the Division. The underground storage tank system owner and/or operator shall file a motion with the court requesting that the final judgment specify the type and amount of all damages awarded to the third party(ies);
- (e) The final judgment is for an amount greater than the Fund entry level in effect on the date of release.
- (f) The tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall gather and maintain documentation and records necessary to verify the necessity for any implemented corrective action and any claim for reimbursement from the Fund. Further, the tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall fully cooperate with any audit which the Commissioner, or his authorized representatives, conducts to verify the expenditures and costs contained within documentation submitted to the Department for reimbursement from the Fund. Therefore, the tank owner and/or operator, and his/her representative or Corrective Action Contractor, shall produce any records, data, documents, information and personnel for interviews as necessary in the Commissioner's determination to fully and completely conduct an audit.

- (13) Applications for Payment.

- (a) Applications for reimbursement for costs of corrective actions shall be submitted on a form established by the Division which shall include an itemization of all charges according to labor

(Rule 1200-1-15-.09, continued)

hours and rates, analytical charges, equipment charges, and other categories which may be identified by the Division, or which the applicant may wish to provide.

- (b) The following statement shall be signed in accordance with the requirements of either part 1 or part 2 of this subparagraph:

I certify to the best of my knowledge and belief: that the costs presented therein represent actual costs incurred in the performance of response actions at this site during the period of time indicated on this application; that an accidental release has occurred from a petroleum underground storage tank system at this site; and that no charges are presented as part of this application that do not directly relate to the performance of corrective actions related to the release of petroleum at this site.

1. The owner or operator and the approved corrective action contractor (CAC) or an authorized representative of the approved CAC shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of rule 1200-1-15-.09(15)(a).
  2. The owner or operator shall sign the application for payment containing the statement in this subparagraph if authorized payments from the fund will be made in accordance with the provisions of rule 1200-1-15-.09(15)(b).
- (c) Applications for payments may be submitted following acceptance by the Division of completed corrective actions. Such corrective actions may include but are not limited to the following:
1. Completion of site stabilization activities which were authorized by the Division;
  2. Completion and submittal of a report for a Preliminary Investigation (site check);
  3. Implementation of a Free Product Removal System;
  4. Development and submittal of an Environmental Assessment Plan;
  5. Implementation of Environmental Assessment as approved in the Environmental Assessment Plan and Development of Remedial Action Plan;
  6. Implementation of Remedial Action Plan; and
  7. Provision of an alternate water supply.
- (d) Applications for payments for the implementation of corrective action may be submitted sixty (60) days following initiation of work to implement the Corrective Action Plan and at sixty (60) day intervals thereafter until completion of the authorized activities. Upon request, the Division may approve interim payments at more frequent intervals.
- (e) All payments shall be subject to approval by the Division. Should a site inspection or other information available to the Division reveal a discrepancy between the work performed and the work addressed by a payment application, the Department may deny payment or may require the Fund to be reimbursed.
- (f) An application for payment shall be received within one year from the date of performance or acceptance of the work in order to be eligible for payments from the Fund.

(Rule 1200-1-15-.09, continued)

- (g) Except for the situations provided for in rule 1200-1-15-.09(11)(a), payment shall not be made for corrective actions performed at a site until the Division has reviewed and accepted a cost proposal for that work and until funds have been obligated from the Fund for completion of that particular stage of work.
  - (h) For payment of third party claims, the UST owner or operator shall submit an application to the Division, using the approved form, attaching the original or a certified copy of a final judgment (enforceable in Tennessee) with proof of payment of the applicable financial responsibility requirement for compensation of third parties as specified in rule 1200-1-15-.09(8)(b). The UST owner or operator shall submit proof that a motion was submitted to the court on their behalf requesting that the type and amounts of all damages awarded to the third party(ies) in the final judgment be specifically listed. This application shall be received by the Division no later than thirty (30) days after notification of judgment.
    - 1. The Division may require additional information to determine the eligibility of a cost for payment.
    - 2. If the application is determined to be incomplete, the Division shall notify the applicant of the deficiencies. The applicant shall submit supplemental information to correct the deficiencies within forty-five (45) days of receipt of notice. The applicant may submit a written request for an extension of time for submittal of information to the Division. The applicant shall state and the Division shall approve the conditions which warrant an extension of submittal time.
    - 3. Only the following costs shall be eligible for payment or reimbursement from the Fund:
      - (i) Awards for property damage to third parties made by a court of suitable jurisdiction in Tennessee; and
      - (ii) Awards for bodily injury to third parties made by a court of suitable jurisdiction in Tennessee.
- (14) Settlement of Third Party Claims.
- (a) No settlement of a third party claim shall be made by an owner or operator without the prior approval of the Division. The Fund shall not be obligated to pay any claim for reimbursement if the owner or operator enters into a settlement without the prior approval of the Division.
  - (b) The Fund shall not be obligated to pay any final and enforceable third party judgment or reimburse an owner or operator for payment of the judgment in any amount exceeding a settlement offer rejected by the owner or operator which was submitted to the Division, reviewed and approved by the Division for payment.
- (15) Fund Payment Procedures.
- (a) Where the owner or operator has submitted an acceptable application for payment for corrective actions or third party claims but has not paid for these activities or claims, payments will be made by a check written to both the eligible owner or operator and the provider of the corrective action services or third party.
  - (b) Payments from the Fund will be made directly to the eligible owner or operator in cases where the owner or operator submits documentation verifying the owner or operator has paid in excess of the applicable financial responsibility requirement for taking corrective actions as specified in rule 1200-1-15-.09(8)(b).

(Rule 1200-1-15-.09, continued)

- (c) The owner or operator is responsible for final payment to the contractor who performed the corrective actions and for payment of judgments to third parties.
  - (d) Contingent upon availability of funds, the Department shall process all applications for payment as soon as possible upon receipt of application. If all costs are considered to be reasonable and eligible for reimbursement, payment will be issued within ninety (90) days once costs have been determined to be reasonable and eligible for reimbursement. If certain costs are considered as not being reasonable or eligible for reimbursement, the Department may issue a check for the amount of the application not in question and provide a forty-five (45) day period in which the owner or operator or contractor may present such information as is necessary to justify the disallowed costs. Following review of such information, the Department may agree to pay the previously disallowed costs, or any portion thereof, or may again disallow the costs for payment. If the Department disallows costs upon a second review, the owner and/or operator may petition the Board for a hearing on the disallowance pursuant to rule 1200-1-15-.11.
- (16) Approval of Corrective Action Contractors.
- (a) The Corrective Action Contractor ("CAC") is the person responsible for conducting and overseeing the corrective action at a petroleum underground storage tank site. There shall be only one CAC for each site.
    - 1. The CAC shall be either:
      - (i) A properly licensed contractor, licensed engineer, registered geologist, or other licensed environmental professional; or
      - (ii) An owner or operator of the petroleum underground storage tank(s) which caused the release of petroleum to the environment, provided that each contractor/subcontractor working for the owner or operator shall be a properly licensed contractor pursuant to T.C.A. §62-6-101 et seq.
  - (b) CACs will be approved to perform Fund eligible work upon satisfaction of the following:
    - 1. The CAC files a written application to become an Approved Corrective Action Contractor with the Division via certified mail or personal service. This application shall be updated by April 1 of each year and include name of CAC, principal(s) of CAC, address(es) of CAC's office, office phone number(s) of CAC, and other information requested by the Division of Underground Storage Tanks.
    - 2. The CAC submits a sworn statement with the written application in part 1., including the following provisions:
      - (i) The CAC will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-3-3, Personal Services and Consultant Services Contracts. The CAC will abide by Rule 0620-3-3-.03(f)(g)(h)(i)(l)(m), Rule 0620-3-3-.04(a)(b)1,5,6; Rule 0620-3-3-.04(c)2; and Rule 0620-3-3.06(a)(b)(c)(d)(e)(g)(h)(l)(m).
      - (ii) The CAC will have written contract(s) with all contractors/subcontractors, and contract(s) shall contain provisions that contractors/subcontractors will abide by and comply with the Rules and Regulations of the Department of Finance and Administration, Chapter 0620-3-3, Rule 0620-3-3-.03(f)(g)(h)(i)(l)(m), Rule 0620-3-3.04(a)(b)1,5,6; Rule 0620-3-3-.04(c)2; and Rule 0620-3-3-.06(a)(b)(c)(d)(e)(g)

(Rule 1200-1-15-.09, continued)

(h)(l)(m), Personal Services and Consulting Services Contracts. Contract(s) between the CAC and contractors/subcontractors shall also contain provisions that all site workers working under authority of contractors/subcontractors shall have applicable health and safety training when required by the Tennessee Department of Labor;

- (iii) Site workers working under authority of the CAC will have the applicable health and safety training when required by the Tennessee Department of Labor;
- (iv) The CAC understands that reimbursement from the Fund will be in accordance with the reasonable rate schedule as established by the Department;
- (v) If the CAC is not the owner or operator of the tank that caused the release, the CAC will have a written contract with the UST owner and/or operator, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The Corrective Action Contractor will/will not (mark one) use the Department's reasonable rate schedule when invoicing the owner or operator for the expenses incurred in the investigation and cleanup of this site.

- (vi) If the CAC is the owner or operator of the tank which caused the release, the CAC will have a written contract with all contractors/subcontractors, and the contract shall contain the following sentence conspicuously located on the first page of the contract:

The contractor/subcontractor (mark one) will/will not (mark one) use the Department's reasonable rate schedule when invoicing the owner or operator for the expenses incurred in the investigation and cleanup of this site;

- (vii) The CACs services will be performed in a manner consistent with the level of care and skill ordinarily exercised by members of their profession practicing in the State of Tennessee, under similar conditions, and at the time the services were rendered. The CAC shall not knowingly or willfully cause the spread of contamination nor inhibit corrective action at the site;
- (viii) The CAC will gather and maintain documentation and records necessary for filing a claim with the Tennessee Petroleum Underground Storage Tank Fund;
- (ix) The CAC will, at a minimum, follow Quality Assurance/Quality Control Standard Operating Procedures supplied by the Division, unless alternate Quality Assurance/Quality Control is approved in writing in advance by the Division;
- (x) The CAC will assure that the CAC and/or any person the CAC employs or contracts with to engage in the practice of engineering shall be appropriately licensed/registered under the Tennessee Architects, Engineers, Landscape Architects and Interior Designers Law and Rules T.C.A. §62-2-101 et seq.;
- (xi) The CAC will assure that any and all work defined as contracting in Tennessee Contractor's License Law (T.C.A. §62-6-101 et seq.) shall be performed by a licensed contractor(s) with appropriate classification and monetary limitation;

(Rule 1200-1-15-.09, continued)

- (xii) The CAC will assure that the CAC and/or any person the CAC employs or contracts with to perform professional geologic work shall be appropriately registered under the Tennessee Geologists Act (T.C.A. §62-36-101 et seq.); and
  - (xiii) The CAC will assure that all work done by the CAC had the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance, and the work was done as specified in chapter 1200-1-15 and/or according to a plan approved by the Division. The CAC will assure that all plans and reports submitted to the Division were prepared and signed by the Registered Professional Engineer or Professional Geologist who prepared or is responsible for the plan or report. The CAC will further assure that a Registered Professional Engineer or Professional Geologist shall make periodic site visits to verify whether or not the work performed was as specified by the Registered Professional Engineer or Professional Geologist, and as specified in chapter 1200-1-15, and/or according to a plan approved by the Division. The CAC shall require a Registered Professional Engineer or Professional Geologist to submit a signed certification based on their personal observation and review of job site records stating whether or not the work was performed as directed by the Registered Professional Engineer or Professional Geologist, and whether or not the work has been performed in accordance with chapter 1200-1-15, and/or a plan approved by the Division. If the work was not performed according to the above specifications, the certification shall include a listing of how the work which was performed varies from chapter 1200-1-15, the approved plan, and/or the authorization of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation. The certification shall be submitted according to a schedule and format determined by the Division.
  - (xiv) The CAC will fully and completely cooperate with the Commissioner during any audit by the Commissioner or his authorized representative, and comply with Rule 1200-1-15-.09(12)(f).
3. The CAC has any applicable license(s) and registration(s) required in the State of Tennessee; and
- (i) If the CAC is a licensed contractor, the contractor shall be properly licensed with an S-Underground Tank Installers, Removal, and Remediation of Pollutants or other applicable classification with a monetary limitation as required under Rule 0680-1-.13 and established by the Board for Licensing Contractors of the Tennessee Department of Commerce and Insurance in the amount of at least three hundred fifty thousand dollars (\$350,000). Date of license expiration shall be included. The CAC shall submit requirements of this part with the application required in part 1 and shall submit documentation of any changes, renewals, renovations, etc. of the CAC's Tennessee license. (There shall be no Fund reimbursement for those expenses which exceed the contractor's monetary limitation.)
  - (ii) All contractors and their subcontractors and employees shall have other applicable license(s) and registration(s).
4. The CAC shall maintain liability insurance coverage of the types and in the amounts described in the Table below, or the equivalent, and shall provide certification, with the Division listed as a certificate holder, to the Division of such coverage with the application described in part 1 and on April 1 of each year thereafter, or more frequently if necessary to keep the Division updated as to the CAC's current insurance coverage.



(Rule 1200-1-15-.09, continued)

<u>Type of Policy</u>	<u>Limits of Liability</u>	<u>Description</u>
Worker's Compensation	Statutory	All states
Employer's Liability	\$500,000	
Automobile Liability	\$1,000,000 combined single limit (bodily injury and property damages)	All owned, non-owned, and hired vehicles
General Liability	\$1,000,000 combined single limit	Broad Form Comprehensive General Liability

5. The CAC will submit a list of the CAC's employees which will be utilized by the CAC as a part of the assessment and remediation of UST sites in the State of Tennessee. This list shall include each employee's job description, title, office, location, and telephone number. This information shall be submitted with the application described in part 1. and annually with a due date of April 1 of each year thereafter.
- (c) The Department will provide notice that applications are to be requested by publication of a legal advertisement which will provide interested firms with the information necessary to request instructions for preparation and submittal of applications and supporting documentation. Prior to the development of an Approved Corrective Action Contractors list, the Department will contact consulting firms listed on the unendorsed list titled "Professional Consulting Firms - Engineers and Geologists" to notify consulting firms of the requirements of subparagraph (b) above. Applications received within 45 days of the date of legal advertisement shall be reviewed prior to establishing a list of Approved Corrective Action Contractors. Applications and supporting documentation shall be independently evaluated by members of a review committee consisting of Division of Underground Storage Tanks staff members according to criteria of subparagraph (b) of this paragraph. Those CACs satisfactorily meeting the requirements of (b)1. through 5. above shall be placed on the Department's list of UST Approved Corrective Action Contractors. Once a CAC has been approved, they will not be required to requalify except under the provisions of subparagraphs (d), (f), and (h) below.
1. Applications received after forty-five (45) days from the date of the legal advertisement shall not be reviewed until a list of Approved Corrective Action Contractors is established. These and subsequent applications shall be reviewed by the review committee and either added to the list of Approved CACs or denied Approved CAC status within 90 days of receipt of the completed application with supporting documentation, or establishment of the Approved CAC list, whichever is later;
  2. If the review committee does not approve a CAC and does not place the CAC on the list of Approved CACs, the decision of the review committee may be appealed to the Board;
  3. CACs who previously submitted applications but did not meet requirements of (b)1. through 5. of this paragraph may submit a subsequent application for review at such time they feel that the requirements of (b)1. through 5. may have been met.
- (d) At any time other than when the Division compiles the new year's Approved CAC list after the submission of information each April 1, a CAC will be removed from the Division's Approved CAC list when it has been determined that the CAC has failed to satisfactorily maintain the

(Rule 1200-1-15-.09, continued)

requirements of part (b) above or has committed one or more of the violations listed in subparagraph (e) below.

1. The removal process shall be initiated when a complaint is referred to the Division's review committee;
2. The review committee shall inform the CAC via certified mail of receipt of a complaint;
3. The Division's review committee may request the CAC to appear at a meeting to show cause why the Department should not remove the CAC from the list of Approved CACs;
4. The CAC may request a meeting with the review committee;
5. The review committee shall notify the CAC of its decision via certified mail within sixty (60) days of dispatch of the certified letter referenced in part 2. above;
6. If the review committee decides to remove the CAC from the list of Approved CACs, removal shall be effective thirty (30) days after dispatch to the last known address on file with the Division unless:
  - (i) the CAC corrects the non-compliance to the satisfaction of the review committee during the thirty (30) day period; or
  - (ii) the CAC files a written appeal with the Division within the thirty (30) day period requesting a hearing to appeal the decision of the review committee to the Board.
7. If the Division removes a CAC from the list of Approved CAC's the CAC may petition the Board for a hearing on its removal pursuant to rule 1200-1-15-.11. The filing of an appeal will postpone actions to remove a CAC from the list of Approved CACs until the appeal is heard by the Board;
8. Once the review committee has dispatched a Notice of Removal to a CAC via certified mail, the Division will approve no additional plans, scopes of work, or cost proposals if such approval will cause Division personnel to violate T.C.A. §62-6-120(c)(1);
9. If an appeal is not filed during the sixty (60) day period, the decision of the review committee will be final;
10. A CAC removed from the Approved CAC list may reapply for approval as provided for in subparts (i) or (ii) below:
  - (i) A CAC who was removed from the Approved CAC list due to failure to satisfactorily maintain the requirements of (b) above may reapply under subparagraphs (b) and (c) above once the requirements of subparagraph (b) have been met;
  - (ii) A CAC who was removed from the Approved CAC list due to one or more of the violations listed in (e) below may reapply after one (1) year. The CAC shall submit evidence showing the reasons why the CAC should be reinstated for evaluation by the review committee. The CAC shall reapply under the provisions of paragraph (16), subparagraphs (b) and (c) of this rule.

(Rule 1200-1-15-.09, continued)

- (e) A CAC may be removed from the list of approved Corrective Action Contractors if it is determined by a review committee consisting of Division staff members that the CAC has done any of the following:
1. The CAC charged the state or owner/operator for unnecessary or unapproved work or work which was not performed;
  2. The CAC filed false information with the Department;
  3. The CAC has been found guilty of violating any of the following or a comparable law in another jurisdiction:
    - (i) T.C.A. §39-16-503 Tampering with or fabricating evidence;
    - (ii) T.C.A. §39-16-504 Destruction of and tampering with governmental records;
    - (iii) T.C.A. §39-14-130 Destruction of valuable papers with intent to defraud;
    - (iv) T.C.A. §39-14-114 Forgery;
    - (v) T.C.A. §39-14-104 Theft of services, or
    - (vi) T.C.A. §39-14-103 Theft of property;
    - (vii) T.C.A. §68-211-101 et seq. Solid Waste Disposal Act;
    - (viii) T.C.A. §68-212-101 et seq. Hazardous Waste Management Act;
    - (ix) T.C.A. §69-3-101 et seq. Water Quality Control Act;
    - (x) Other environmental regulatory legislation.
  4. The CACs or an employee(s), principal(s), or officer(s) of the CAC is found to have engaged in the unauthorized practice of engineering, contracting, or geology under T.C.A. §62-2-101 et seq., §62-6-101 et seq., and §62-36-101 et seq., or a comparable law in another jurisdiction by the appropriate regulatory agency or court.
  5. Due to the quality of work performed by the CAC, the CAC has significantly delayed or inhibited progress in achieving appropriate corrective action at a site(s). This shall include, but shall not be limited to, the following:
    - (i) The CAC performs a non-approved action which spreads contamination in the environment;
    - (ii) The CAC files a plan (e.g. Environmental Assessment Plan, Corrective Action Plan, etc.) which is rejected by the Division as deficient, followed by three subsequent revisions, each of which is rejected by the Division as deficient; or
    - (iii) The CAC fails to supply recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions supported by the following:

(Rule 1200-1-15-.09, continued)

- (I) The physical and chemical characteristics of petroleum, including its toxicity, persistence, and potential for migration;
  - (II) The hydrogeologic characteristics of the petroleum site and the surrounding land;
  - (III) The proximity, quality, and current and future uses of groundwater;
  - (IV) An exposure assessment;
  - (V) The proximity, quality, and current and future uses of surface waters;
  - (VI) Applicable regulations in chapter 1200-1-15; and
  - (VII) The magnitude and extent of petroleum contamination at the petroleum site and the surrounding land.
- (iv) The CAC supplies recommendations for further assessment, remediation, site specific cleanup standards, site closure, or other conclusions not supported by items (I) through (VII) listed in subpart (iii) of this part.
6. The CAC filed plan(s) or report(s) which do not bear the appropriate signature and Tennessee license/registration number of a Registered Professional Engineer or Professional Geologist.
  7. The CAC performed work which did not have the prior approval of a Registered Professional Engineer or Professional Geologist who is licensed/registered with the Tennessee Department of Commerce and Insurance.
  8. The CAC has deviated from an approved plan or scope of work without the approval of the Division. This includes, but is not limited to, the following:
    - (i) Failure to follow Quality Assurance and Quality Control approved in the plan, or
    - (ii) Failure to follow the schedule for implementation approved in the plan.
  9. The CAC has failed to follow Quality Assurance/Quality Control (QA/QC) procedures supplied by the Division without having alternate QA/QC approved in advance in writing by the Division.
  10. The CAC has failed to follow UST regulations promulgated in chapter 1200-1-15.
  11. The CAC failed to have a Registered Professional Engineer or Professional Geologist file a signed certification according to a schedule and format required by the Division. Said certification shall be based on the Registered Professional Engineer's or Professional Geologist's personal observation and review of job site records. The certification shall state whether or not the work was performed as directed by a Registered Professional Engineer or Professional Geologist, and whether or not the work has been performed in accordance with chapter 1200-1-15, and/or a plan approved by the Division. The certification shall include a listing of how the work performed varies from chapter 1200-1-15, the approved plan, and/or the work approved of the Registered Professional Engineer or Professional Geologist and the specific reason for each variation.

(Rule 1200-1-15-.09, continued)

- (f) A CAC that fails to comply with the requirements of subparagraphs (b)(1),(4), or (5) of this rule on April 1 of any year will not be eligible to remain on the list of approved contractors.
    - 1. The review committee shall inform the CAC via certified mail that removal shall be seven (7) days after dispatch to the last known address on file with the Division unless the CAC corrects the non-compliance to the satisfaction of the review committee during the seven (7) day period.
    - 2. A CAC that fails to correct this noncompliance as provided under (f)(1), may reapply to be on the Approved CAC list under subparagraphs (b) and (c) of this Rule once it can meet all of those requirements.
  - (g) No CAC shall be placed on the Approved Corrective Action Contractors list if the CAC is on a list of contractors banned from usage on federally funded projects. If a CAC on the Approved Corrective Action Contractors list is placed on the list of contractors banned from usage on federally funded projects, that CAC will be removed from the Approved Corrective Action Contractors list. When the CAC is removed from the list of contractors banned from usage on federally funded projects, the CAC may apply to be added to the Approved Corrective Action Contractors list according to procedures outlined in subparagraphs (b) and (c) of this paragraph. A CAC on a list of contractors banned from usage on federally funded projects cannot work as a subcontractor to an Approved Corrective Action Contractor.
  - (h) The appearance of a CAC on the Division's list of Approved Corrective Action Contractors shall in no way establish liability or responsibility on the part of the Division, the Fund, or the State of Tennessee in regards to the services provided by the CAC or circumstances which may occur as a result of such services.
  - (i) An owner or operator may perform corrective actions for releases of petroleum from USTs he owns or operates provided that he submits an application with documentation as described in subparagraphs (b) and (c) and the application is approved by the Division. The owner or operator may use qualifications of subcontractor(s) in addition to qualifications of the owner or operator in applying for Approved Corrective Action Contractor status. If an owner or operator uses a subcontractor(s) in qualifying for an Approved Corrective Action Contractor classification and there is a change of a subcontractor whose qualifications were used in the application or documentation, then the owner or operator shall notify the Division; the owner or operator shall be removed from Approved Corrective Action Contractor status. The owner or operator shall submit a new application with documentation and be approved as discussed in subparagraphs (b) and (c) to continue work as an Approved Corrective Action Contractor.
  - (j) A CAC working as a subcontractor under contract to an Approved CAC is not required to be classified as an Approved CAC. The subcontractor shall maintain all applicable license(s) and/or registration(s) required in the State of Tennessee for work performed.
- (17) Recovery of Costs by State - Apportionment of Liability.
- (a) Making use of any and all appropriate existing state legal remedies, the Commissioner may commence court action to recover the amount expended by the state from any and all responsible parties for each site investigated, identified, contained or cleaned up, including up to the limits of financial responsibility for owners and/or operators of petroleum underground storage tanks covered by the Fund and the entire amount from owners and/or operators of petroleum underground storage tanks not covered by the Fund.
  - (b) In any action under this rule, no responsible party shall be liable for more than that party's apportioned share of the amount expended by the state for such site. The responsible party has

(Rule 1200-1-15-.09, continued)

the burden of proving his apportioned share. Such apportioned share shall be based solely on the liable party's portion of the total volume of the petroleum at the petroleum site at the time of action under this chapter. Any expenditures required by the provisions of this chapter made by a responsible party (before or after suit) shall be credited toward any such apportioned share.

- (c) In no event shall the total moneys recovered from the responsible party or parties exceed the total expenditure by the state for each site.
  - (d) Any party found liable for any costs or expenditures recoverable under this chapter who establishes by a preponderance of evidence that only a portion of such costs or expenditures are attributable to his or her actions shall be required to pay only for such portion.
  - (e) If the trier of the fact finds evidence insufficient to establish such party's portion of costs or expenditures in such a cost recovery, the court shall apportion such costs or expenditures among the defendants, to the extent practicable, according to equitable principles.
- (18) Failure to Take Proper Action.

Any responsible party who fails without sufficient cause to properly provide for removal of petroleum or remedial action upon order of the commissioner pursuant to this chapter may be liable to the state for a penalty in an amount equal to one hundred fifty percent (150%) of the amount of any costs incurred by the state as a result of such failure to take proper action. The Commissioner may recover this penalty in an action commenced under T.C.A. §68-53-115, rule 1200-1-15-.09(17), or in a separate civil action, and such penalty shall be in addition to any costs recovered from such responsible party pursuant to this chapter.

(19) Severability.

If any paragraph, subparagraph, part, subpart, item or subitem, section or subsection of this Rule is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Rule shall not be affected thereby.

**Authority:** T.C.A. §§4-5-201 et seq., 68-215-107, and 68-215-101 et seq. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed July 3, 1991; effective August 17, 1991. Amendment filed November 24, 1992; effective January 9, 1993. Amended by Public Chapter 467; effective May 31, 1993. Amendment filed July 28, 1995; effective October 10, 1995. Amendment filed August 6, 1996; effective October 20, 1996. Amendment filed February 4, 1998; effective April 20, 1998. Amendment filed March 6, 2000; effective May 20, 2000.

#### **1200-1-15-.10 FEE COLLECTION AND CERTIFICATION ISSUANCE REGULATIONS.**

(1) Purpose.

The purpose of this Rule is to establish a system and schedule for collection of underground storage tank fees.

(2) Applicability.

Requirements of this Rule apply to the following persons:

- (a) All owners/operators of petroleum underground storage tanks reported under the requirements of T.C.A. §68-215-101 et seq., as follows:
  - 1. All petroleum underground storage tanks that are actively storing petroleum;

(Rule 1200-1-15-.10, continued)

2. All petroleum underground storage tanks that are reported as in service at the start of the annual billing cycle (July 1 for underground storage tanks in East Tennessee, October 1 for underground storage tanks in Middle Tennessee, and January 1 for underground storage tanks in West Tennessee); and
  3. All petroleum underground storage tanks taken temporarily out of service after June 30, 1988, and not properly closed.
- (b) Rule 1200-1-15-.10 becomes effective July 1, 1990.
- (3) Annual Petroleum Underground Storage Tank Fees.
- (a) Any person required to pay a fee under this Rule shall submit the fee in the specified amount, with checks made payable to the Department Environment and Conservation/Underground Storage Tanks Division for deposit in the State Treasury.
  - (b) Any person who is an owner of a petroleum underground storage tank subject to annual fees shall pay the required annual fee unless a notarized agreement signed by the owner and the operator of petroleum underground storage tanks stipulates that the operator shall pay the annual fee. A new agreement must be submitted annually if the operator is to pay the annual fee.
  - (c) The fee schedule provided in this Rule shall be based upon the annual financial requirement to operate the petroleum underground storage tanks program established pursuant to T.C.A. §68-215-101 et seq.
  - (d) The amount of the annual petroleum underground storage tanks fee shall be one hundred twenty-five dollars (\$125) per tank.
  - (e) The amount of the annual administrative service fee for agencies and functions of the U.S. Government having sovereign immunity shall be twenty-five dollars (\$25) per tank. Agencies and functions of the U.S. Government are not eligible for benefit or financial assistance from the Tennessee Petroleum Underground Storage Tanks Fund.
  - (f) Any owner or operator who pays an annual fee on an existing underground storage tank which is subsequently permanently closed in accordance with Rule 1200-1-15-.07(2) and replaced by a new underground storage tank installed at the same site in accordance with Rule 1200-1-15-.02(1) and 1200-1-15-.02(3) will not be required to pay an additional annual fee.
  - (g) Payment of the entire amount of the annual fee is required for underground storage tanks in service or temporarily out of service during any portion of the current billing year. Tanks placed into service after the current billing year begins or tanks which are permanently closed before the current billing year ends are not due a refund of the annual fee or any portion thereof.
- (4) Use of the Fee.
- (a) The annual petroleum underground storage tank fees shall be deposited into the Petroleum Underground Storage Tanks Fund and shall be used as specified in the Tennessee Petroleum Underground Storage Tanks Act. The use of the Fund includes but is not limited to:
    1. Provide a mechanism to assist with the financial responsibility requirements for owners and/or operators of petroleum underground storage tanks, including cleanup of contamination and third party claims due to bodily injury and/or property damage caused by leaking petroleum underground storage tanks.

(Rule 1200-1-15-.10, continued)

- (i) The Fund shall provide for cleanup of contamination caused by leaking petroleum underground storage tanks whose owners and/or operators have paid the required petroleum underground storage tank fee. The Fund shall be responsible for cleanup costs above the entry level to the fund in an amount not to exceed one million dollars (\$1,000,000). The initial owner and/or operator financial responsibility requirement for clean-up (taking corrective action) is specified in Rule 1200-1-15-.09(8)(b).
    - (ii) The Fund shall provide coverage for third-party claims involving bodily injury and/or property damage caused by leaking petroleum underground storage tanks whose owners and/or operators have paid the required petroleum underground storage tank fee. The Fund shall be responsible for court awards involving third party claims above the entry level into the Fund in an amount not to exceed one million dollars (\$1,000,000). The initial owner and/or operator financial responsibility requirements for third party claims involving bodily injury or property damage is specified in Rule 1200-1-15-.09(8)(b).
  - 2. Provide for administrative costs of implementation of the Petroleum Underground Storage Tanks Program.
- (5) Failure to Pay the Annual Petroleum Underground Storage Tank Fee.
- (a) Any petroleum underground storage tank owner/operator who fails to pay the lawfully levied petroleum underground storage tank fee will be assessed a monthly penalty of 5 percent (5%) of the amount. Such penalty shall be assessed monthly until the fee and all associated penalties are paid. The monthly penalty may be waived by the Commissioner upon receipt of documentation justifying late payment of the fee.
  - (b) The Department shall not issue a petroleum underground storage tanks certificate to any facility where the owner/operator has failed to pay the lawfully levied petroleum underground storage tank fees and/or associated late penalties. To refuse or fail to pay the Department the annual fee per tank is an unlawful action as described in T.C.A. §68-215-104(3).
  - (c) The Department shall revoke the petroleum underground storage tanks certificate for any facility for which the owner/operator has failed to pay the lawfully levied petroleum underground storage tanks fee(s). Should an owner/operator fail to pay the annual fee(s), following 15 days from the receipt of written notice that the Department intends to remove the certificate, a Division representative may remove the certificate from a facility.
  - (d) Upon failure or refusal of an owner and/or operator of a petroleum underground storage tank to pay a fee lawfully levied within a reasonable time allowed by the Commissioner, the Commissioner may proceed in the Chancery Court of Davidson County to obtain judgment and seek execution of such judgment.
- (6) Petroleum Underground Storage Tank Annual Fee Notices.
- (a) Prior to the due date of the annual underground storage tanks fee, the Division shall issue fee notices to the owner/operator of the petroleum underground storage tanks. Fee notices and due dates shall be staggered using the three grand divisions of the State of Tennessee.
    - 1. Tank fees for underground storage tanks in the following East Tennessee counties shall be due on July 31 of each year:



(Rule 1200-1-15-.10, continued)

Johnson, Sullivan, Carter, Washington, Unicoi, Hancock, Hawkins, Greene, Claiborne, Grainger, Hamblen, Cocke, Scott, Campbell, Union, Anderson, Knox, Jefferson, Sevier, Morgan, Roane, Loudon, Blount, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, Sequatchie, Hamilton, Bradley, Polk, Franklin, and Marion.

2. Tank fees for underground storage tanks in the following Middle Tennessee counties shall be due October 31 of each year:

Stewart, Montgomery, Robertson, Sumner, Macon, Clay, Pickett, Houston, Hickman, Cheatham, Davidson, Wilson, Trousdale, Smith, Jackson, Overton, Fentress, Putnam, Cumberland, White, DeKalb, Van Buren, Warren, Cannon, Rutherford, Williamson, Dickson, Humphreys, Perry, Wayne, Lewis, Lawrence, Maury, Giles, Marshall, Lincoln, Moore, Bedford, and Coffee.

3. Tank fees for underground storage tanks in the following West Tennessee counties shall be due January 31 of each year:

Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll, Benton, Lauderdale, Tipton, Shelby, Haywood, Fayette, Madison, Hardeman, Henderson, Chester, McNairy, Decatur, and Hardin.

- (b) The owner/operator of petroleum underground storage tanks shall pay the annual fee on or before the due date.
  - (c) Any owner who brings an underground storage tank system into use after July 1, 1989, shall submit the current year's tank fee with the required notice of existence of such tank system required in Rule 1200-1-15-.02(3)(a).
- (7) Issuance of Annual Petroleum Underground Storage Tank Facility Certificates.
- (a) The Division shall issue petroleum underground storage tank facility certificates annually. The certificate will contain the facility identification number, address, number of underground storage tanks, and the size of said tanks. The color of the certificate will be changed annually in order to assist persons delivering petroleum in determining if the underground storage tank facility has a current certificate.
  - (b) Certificate issuance shall be staggered using the three grand divisions of the State of Tennessee. Certificates shall be issued as follows:
    1. Petroleum underground storage tank facility certificates for East Tennessee shall be issued in the month of September to owner/operators for petroleum underground storage tanks in the following counties:

Johnson, Sullivan, Carter, Washington, Unicoi, Hancock, Hawkins, Greene, Claiborne, Grainger, Hamblen, Cocke, Scott, Campbell, Union, Anderson, Knox, Jefferson, Sevier, Morgan, Roane, Loudon, Blount, Bledsoe, Rhea, Meigs, McMinn, Monroe, Grundy, Sequatchie, Hamilton, Bradley, Polk, Franklin, and Marion.

The annual certificate shall be effective for one year, starting October 1 of the year to September 30 of the following year.
    2. Petroleum underground storage tank facility certificates for Middle Tennessee shall be issued in the month of December to owner/operators for petroleum underground storage tanks in the following counties:

(Rule 1200-1-15-.10, continued)

Stewart, Montgomery, Robertson, Sumner, Macon, Clay, Pickett, Houston, Hickman, Cheatham, Davidson, Wilson, Trousdale, Smith, Jackson, Overton, Fentress, Putnam, Cumberland, White, DeKalb, Van Buren, Warren, Cannon, Rutherford, Williamson, Dickson, Humphreys, Perry, Wayne, Lewis, Lawrence, Maury, Giles, Marshall, Lincoln, Moore, Bedford, and Coffee.

The annual certificate shall be effective for one year, starting January 1 of the year to December 31 of the same year.

3. Petroleum underground storage tank facility certificates for West Tennessee shall be issued in the month of March to owner/operators for petroleum underground storage tanks in the following counties:

Lake, Obion, Weakley, Henry, Dyer, Crockett, Gibson, Carroll, Benton, Lauderdale, Tipton, Shelby, Haywood, Fayette, Madison, Hardeman, Henderson, Chester, McNairy, Decatur, and Hardin.

The annual certificate shall be effective for one year, starting April 1 of the year to March 31 of the following year.

- (8) Unlawful Action.

It shall be unlawful to put petroleum into underground storage tanks at a facility without a current petroleum underground storage tank facility certificate. This is a violation for the person putting petroleum into the underground storage tank as well as for the person having product put into the underground storage tank.

- (9) Removal of Certificates.

The Division may remove the petroleum underground storage tank facility certificate from a facility if the owner/operator violates the provisions of T.C.A. §68-215-101 et seq. or any regulations promulgated subsequent to this Act. Such removal shall be authorized through issuance of a Commissioner's Order due to violations of the Act or regulations. The owner/operator may appeal the Commissioner's Order to the Board.

**Authority:** T.C.A. §§4-5-201 et seq., 68-215-101 et seq., and 68-215-107. **Administrative History:** Original rule filed March 1, 1990; effective April 15, 1990. Amendment filed July 3, 1991; effective August 17, 1991. Amendment filed February 4, 1994; effective June 28, 1994. Amendment filed February 4, 1994; effective June 28, 1994. Amendment filed July 28, 1995; effective October 10, 1995. Amendment filed July 24, 1995; effective November 28, 1995. Amendment filed February 4, 1998; effective April 20, 1998. Amendment filed March 6, 2000; effective May 20, 2000.

#### **1200-1-15-.11 APPEALS.**

- (1) Any responsible party, tank owner, tank operator, Corrective Action Contractor (CAC) or person who has a right to appeal a determination of the Commissioner by these Rules shall comply with the procedure set forth in this part to perfect an appeal. Such responsible party, tank owner, tank operator, Corrective Action Contractor ((CAC), or person may petition the Board for a hearing provided a written petition is submitted to and received by the Commissioner within thirty (30) days of receipt of the Division's determination. The Division's determination and action shall be final and not subject to review unless the written petition for hearing is submitted and received by the Commissioner within this time frame. The written petition shall set forth the basis for the appeal as required by the

(Rule 1200-1-15-.11, continued)

Administrative Procedures Act., T.C.A. §4-5-101 et. Seq. and the Rules promulgated thereunder, particular Rule 1360-4-1-.05.

**Authority:** T.C.A. §§68-215-107 and 4-5-201 et seq. **Administrative History:** Original rule filed October 24, 1989; effective December 8, 1989. Amendment filed December 19, 1989; effective February 2, 1990. Amendment filed July 3, 1991; effective August 17, 1991. Amendment filed February 4, 1998; effective April 20, 1998.

#### **1200-1-15-.12 INDICIA OF OWNERSHIP.**

- (1) Applicability.
  - (a) This Rule applies to holders of security interests in petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located.
  - (b) Holders are subject to these requirements if they became holders on or after April 12, 1996.
- (2) Definition of Terms. When used in this Rule, the following terms shall have the meanings given below:
  - (a) “Borrower”, “debtor” or “obligor” is a person whose petroleum underground storage tank or UST system is encumbered by a security interest. These terms are used interchangeably.
  - (b) “Foreclosure” or “foreclosure and its equivalent” means purchase at a foreclosure sale, acquisition or assignment of title in lieu of foreclosure, termination of a lease or other repossession, acquisition of right to title or possession, an agreement in satisfaction of the obligation, or any other formal or informal manner (whether pursuant to law under warranties, covenants, conditions, representations or promise from the borrower) by which the holder acquires title to or possession of secured property.
  - (c) “Holder” is a person who maintains indicia of ownership primarily to protect a security interest in a petroleum underground storage tank or UST system. A holder includes the initial holder or purchaser (such as a loan originator), any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market), any subsequent assignee, transferee or purchaser from a holder, guarantor of an obligation, surety or any other person who holds ownership who acts on behalf of or for the benefit of a holder.
  - (d) “Indicia of ownership” means evidence of a security interest, evidence of an interest in a security interest or evidence of an interest in real or personal property securing a loan or other obligations, including any legal or equitable title to real or personal property acquired incident to foreclosure and its equivalents. Evidence of such interests includes, but is not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (herein “lease financing transaction”), and legal or equitable title obtained pursuant to foreclosure, and its equivalents. Evidence of such interests also includes assignments, pledges or other rights to or other forms of encumbrances against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.
  - (e) “Operation” means, for purposes of this part, the use, storage, filling or dispensing of petroleum contained in a petroleum underground storage tank or an underground storage tank (UST) system.
  - (f) “Primarily to protect a security interest” means that the holder’s indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation, but does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held

(Rule 1200-1-15-.12, continued)

primarily for purposes other than as a protection of a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why ownership indicia are held shall be for protection of a security interest.

- (g) “Security interest” means an interest in a petroleum underground storage tank or UST system or petroleum site which is created or established for the purpose of securing a loan or other obligation. Security interests include, but are not limited to, mortgages, deeds of trust, liens and title pursuant to lease financing transaction. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, inventory and/or other personal property financing arrangements and consignments, if the transaction creates or establishes an interest in a petroleum underground storage tank or UST system or petroleum site for the purpose of securing a loan or other obligation.
  - (h) “UST system” means an underground storage tank, connected underground piping, underground ancillary equipment and containment system, if any.
- (3) Notification by the Holder.
- (a) Within thirty (30) days after foreclosure or its equivalent is completed, the holder shall notify the Department of the foreclosure. The holder shall use a notification form prescribed by the Division. Holders shall complete the notification form accurately and in its entirety.
  - (b) If at any time after foreclosure, the holder causes a change in the status of the tanks at a petroleum UST facility, the holder shall report the change within thirty (30) days. This includes but is not limited to change of ownership, upgrading, or replacement of tanks, changes in mailing address and changes in service. Such reports shall be made using an amended notification form, provided in Appendix 1.
  - (c) In the case of a sale of petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located or the sale of the security interest in such petroleum underground storage tanks, UST systems, petroleum sites or property on which a petroleum site or UST system is located, which occurs at any time after foreclosure, the holder must submit the notification form provided in Appendix 3 and must also inform the buyer of the notification requirements.
- (4) Fund Eligibility Requirements.
- (a) If a release from a petroleum underground storage tank system would have been eligible for reimbursement from the UST Fund under the provisions of Rule 1200-1-15-.09 had there been no foreclosure, then the holder shall be able to take full advantage of the Petroleum Underground Storage Tank Fund. Reimbursement from the Fund shall be in accordance with the provisions of Rule 1200-1-15-.09.
  - (b) A holder who is eligible for reimbursement from the state Fund must satisfy the financial responsibility requirements as required by Rule 1200-1-1-5-.09(8)(b).
  - (c) For a petroleum underground storage tank system, which was Fund Eligible at the time of foreclosure, to remain Fund Eligible after the holder has sold or otherwise disposed of his interest therein, the holder must have paid annual tank fees in a timely manner in accordance with Rule 1200-1-15-.10(6).
  - (d) If a Fund Eligible release occurred prior to the time of foreclosure and assessment and remediation activities have been initiated in accordance with the requirements of Rule 1200-1-

(Rule 1200-1-15-.12, continued)

15-.06, then assessment and remediation, in accordance with the requirements of Rule 1200-1-15-.06, must be continued for the site to remain Fund Eligible after the holder has sold or otherwise disposed of his interest in it.

- (e) If annual tank fees are not timely paid for the petroleum underground storage tanks, Fund Eligibility has not been established on the tanks, or Fund Eligibility has been lost for any other reason, the purchaser of such tanks from a holder must follow the requirements of Rule 1200-1-15-.09(5)(c) or (d) to establish or reestablish Fund Eligibility for the UST systems.
- (5) Fee Payment. Annual tank fees may be paid after foreclosure either by the holder or by an operator who is in charge of the daily operation of the UST systems provided that the holder has properly registered the tanks in accordance with Rule 1200-1-15-.12(3).

**Authority:** T.C.A. §68-215-201 et seq. **Administrative History:** Original rule filed March 6, 2000; effective May 20, 2000.